

**Report of the Independent
International Review Commission on
Doping Control - U.S.A. Track & Field**

July 11, 2001

Independent International Review Commission

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July 11, 2001

VIA E-MAIL AND FEDERAL EXPRESS

Bill Roe, President
Executive Committee
USA Track & Field
One RCA Dome, Suite 140
Indianapolis, Indiana 46225

Dear Mr. Roe and Members of the Executive Committee::

The Independent International Review Commission on Doping Control – U.S.A. Track and Field – has completed the enclosed Report dated July 11, 2001, which is submitted to you pursuant to the letter of September 29, 2000 that established the Commission. We appreciate having had the opportunity to be of service.

Sincerely,

/s/

Prof. Richard McLaren, Chairman

/s/

Curtis H. Barnette, Secretary

/s/

David Howman

/s/

Col. Micki King, Ret (USAF)

Enclosure
cc: Craig A. Masback (w/encl.)

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I. INTRODUCTION

A. Creation And Charge Of The Commission

The Independent International Review Commission ("the Commission") was created as a result of allegations made during the 2000 Olympic Games in Sydney that USA Track & Field ("USATF"), the United States' national governing body for the sport of track and field, had concealed information about US athletes who may have tested positive for the use of performance enhancing drugs.¹ Chief Executive Officer Craig Masback, on behalf of USATF, denied the allegations, and invited an independent commission to conduct an inquiry. As a result of discussions in Sydney, the United States Olympic Committee ("USOC"), through its Chief Executive Officer Norman Blake, indicated support for such a commission, and the USOC committed funds to help the Commission in its work. USATF issued a press release on September 29, 2000 and held a press conference the following day to announce the creation of the Commission.

By letter dated September 29, 2000 (Ex. 1), Mr. Masback and USATF President Patricia Rico specifically asked the Commission to:

¹ See, e.g., *IAAF Official: U.S. Track Hiding Drug Test Details*, Atlanta J. Const., Sept. 23, 2000, at 7C ("Arne Ljungqvist, chief anti-doping official of the International Amateur Athletic Federation, accused the U.S. association of withholding details of 12 to 15 positive samples"); Jere Longman, *US Goes on Offensive Over Tests for Drugs*, N.Y. Times, Sept. 27, 2000, at D1 ("Dr. Arne Ljungqvist [of the IAAF] . . . has criticized the United States track federation for what he called a failure to report in a timely manner 12 to 15 positive drug tests over the past two years."); Elliott Almond, *Salt Lake Bribery Scandal Thought To Be Reason Behind Intense Drug Scrutiny in Sydney*, San Jose Mercury News, Sept. 28, 2000 ("International officials alleged Americans have hidden positive drug tests"); Owen Slot, *US Athletes Facing Ban Over Drug Testing*, London Sunday Telegraph, Oct. 1, 2000, at 3 (quoting IAAF official Arne Ljungqvist as saying that USATF is under suspicion because "they may be covering things up").

1. Determine "whether any person at USA Track & Field attempted to, or did in fact, cover up any information regarding [any positive] tests" (id. at 2);
2. Examine "allegations that USA Track & Field did not timely disclose" certain "positive test results analyzed by the Indianapolis laboratory to the International Amateur Athletic Federation" ("IAAF") (id. at 1);
3. Examine allegations that USATF "did not timely disclose C.J. Hunter's positive tests" (id.);
4. "[R]eview, analyze and report on USA Track & Field's rules, procedures and compliance with applicable anti-doping rules and procedures for the period beginning on January 1, 1999, and ending immediately preceding the Sydney Olympic Games" (id. at 2); and
5. "[R]ecommend to USA Track & Field a mechanism for balancing the competing objectives of conducting an effective anti-doping program and administering a disciplinary process that is fair and just to athletes." (Id.).

In addition, the Commission was "authorized to make any inquiry that it deemed necessary and appropriate to fulfill its responsibility." (Id.) In doing this work, the Commission was to "be free from control of USA Track & Field, its board of directors, officers and management." (Id.) The Commission was to report its findings to USATF's President and Executive Committee (id.), and, as described in the USATF press release, the Commission was to issue written findings, which would be made public. (Ex. 2.)

B. Members And Work Of The Commission

The members of the Commission are:

- Richard H. McLaren of London, Ontario, Canada. Professor McLaren is a Canadian professor of law and counsel to a London, Ontario law firm. A long time member of the Court of Arbitration for Sport ("CAS") in Lausanne, Switzerland, he has served as an arbitrator of the Ad Hoc Division of CAS at the Winter Olympic Games in Nagano, Japan in 1998 and at the Summer Olympic Games in Sydney. Professor McLaren has arbitrated many

international doping cases at CAS and has extensive arbitration experience in North America with professional sport. He served as Chairman of the Commission.

- Curtis H. Barnette of Bethlehem, Pennsylvania. Mr. Barnette is Chairman Emeritus of Bethlehem Steel Corporation and is Of Counsel to Skadden, Arps, Slate, Meagher & Flom LLP. Mr. Barnette was the former General Counsel and Chairman and CEO of Bethlehem Steel. He served as Secretary to the Commission.
- David Howman of Wellington, New Zealand. Mr. Howman is a barrister and is Chairman of the Legal Committee of the World Anti-Doping Agency ("WADA"). He served as Deputy Chair of WADA's Independent Observer Group monitoring doping controls at the Sydney Games. Mr. Howman also is Chairman of the New Zealand Sports Drug Agency.
- Colonel Micki King (USAF, Ret.) of Lexington, Kentucky. Col. King is a 1972 Olympic Gold Medalist in women's diving, and currently serves as the Special Assistant to the Director of Athletics at the University of Kentucky. She was the charter chairperson of the USOC Athletes' Advisory Council and has long been active in USOC affairs. She served on active duty in the US Air Force for 26 years.

The Commission retained the law firm of Skadden, Arps, Slate, Meagher & Flom LLP to assist it in the conduct of its inquiry.

Between October 2000 and July 2001, the Commission interviewed more than 60 witnesses in North America and Europe, including officials and employees of USATF, the IAAF, the USOC, the International Olympic Committee ("IOC"), WADA, the United States Anti-Doping Agency ("USADA"), four international laboratories accredited for drug testing by the IOC, and athletes, coaches, agents and lawyers involved in the adjudication of doping cases. In addition, the Commission and its counsel reviewed thousands of documents that were provided by those

organizations or individuals, or which were obtained through the Commission's own research.² The Commission did not have the power to subpoena documents or testimony, but relied on the voluntary cooperation of all concerned to obtain information.

In particular, USATF allowed the Commission to review the files of all doping cases in which a positive sample was reported during 1999-2000, and other relevant documents, after all Commissioners and counsel signed agreements to respect the confidentiality of any confidential files at USATF. In addition, USATF permitted the Commission to review the files of six out of eleven cases which were pending as of January 1, 1999. USATF declined the Commission's requests for access to the five remaining case files.³ The Commission was able to obtain some information about these cases from other sources, however, and therefore, although hindered by the denial of access to these USATF files, the Commission was able to reach some conclusions concerning those cases. Other organizations, including the IAAF and the USOC, gave the Commission access to all information and documents it requested, subject to certain confidentiality understandings. USATF, the IAAF, the IOC-accredited laboratory in Montreal and others also made written submissions to the Commission, with supporting documentation.

² Lists of all witnesses and organizations that provided information or documents may be found in Exhibit 3.

³ As to one of these cases, USATF officials stated that they were not free to disclose the reasons why the Commission could not review the file. Former USATF outside general counsel Robert M. Hersh later advised the Commission that when this case was discontinued, USATF entered into a confidentiality/non-disclosure agreement with the athlete that precluded it from discussing any aspect of the case. As to the other cases, USATF said that objections from athletes' counsel precluded USATF from making the files available to the Commission.

C. Summary Of Findings

1. Whether USATF "Covered Up" Any Positive Drug Tests

- The Commission found no evidence that anyone at USATF "covered up" any positive drug tests, in the sense that no one willfully suppressed or failed to process any positive drug tests by US athletes.⁴

The Commission also concluded, however, that USATF did not utilize certain of its own existing procedures for assuring that no doping cases were ignored or suppressed. Specifically, USATF did not follow through to ensure that semi-annual audits were performed by an independent auditing firm in a timely manner. These audits were a fundamental element of USATF's out-of-competition testing program. No audits were completed during the period under review. Accordingly, although the Commission's own inquiry determined that no positive drug tests were in fact "covered up," USATF itself did not receive audit reports that were intended to account for every positive drug test, thereby failing to use a tool it had created to help ensure the integrity of its program.

2. Whether USATF Timely Disclosed Certain Positive Drug Results To The IAAF

- In cases where a doping violation was found at the end of a complete adjudicatory process, the Commission found that USATF reported the athlete's name and violation to the IAAF.

⁴ For purposes of this Report, the terms "positive drug test," "positive sample" or "positive test result" will be used to refer to laboratory findings of positive or irregular samples, and do not denote a finding that a doping violation has occurred. The term "doping violation" shall refer to a finding at the end of an adjudication process that the athlete committed a doping offense. Additionally, the term "IAAF test" will refer to a drug test administered by the IAAF, while the term "domestic test" will refer to a drug test administered by the USOC on behalf of USATF.

It did not always do so in a timely fashion, however, and frequently did not issue a required public announcement of the violation.

- In all other domestic cases, the Commission found that USATF interpreted and applied its own confidentiality regulation -- Regulation 10(G) -- so restrictively that its effect was to prevent the IAAF from enforcing its own doping controls on an international level.

USATF CEO Craig Masback has stated that “USATF is one of the IAAF’s leaders in drug testing.”⁵ However, USATF's application of Regulation 10(G) and its policy of nondisclosure was, in the Commission's view, inconsistent with this stated serious commitment to combat doping in international sport.

Specifically, during the period in question, USATF had a confidentiality rule that limited public release of information about doping cases prior to final adjudication, in order to protect the reputations of athletes whose cases are closed for one reason or another without an ultimate finding of a doping violation. USATF took the position that this regulation not only prohibited public disclosure, but also barred USATF from sharing information with its own international federation, the IAAF, about pending domestic doping cases or about domestic cases that did not result in a violation. In such cases, if the IAAF inquired, USATF gave the IAAF only sparse information about the status of the case, and withheld the name of the athlete. It also denied the IAAF access to files that would have disclosed the details of the case or the reason why an athlete was exonerated. Without this information, the IAAF could not exercise its authority under its own rules to review doping cases to determine if they should be referred to IAAF arbitration and whether the athlete should be subject to international sanction.

⁵ Ex. 4, Letter to L. Diack from C. Masback, dated October 13, 2000, at 1.

In this regard, the Commission further found that:

- There was no impediment in law or in USOC regulation that prevented USATF, if it chose, from adopting a policy of prompt disclosure to the IAAF of positive test results by named athletes.

Specifically, the Commission determined, with the advice of its counsel, that there is nothing in the US statute that governs amateur sports – the Amateur Sports Act (the "Act" or "ASA") -- that precluded USATF from disclosing such information about domestic doping cases to the IAAF. As Mr. Masback stated, the ASA "provides no statutory guarantee of confidentiality in a process where eligibility to compete is at stake."⁶ Nor are USATF's restrictions on information-sharing with the IAAF mandated by any USOC rule or regulation; indeed, other US sports national governing bodies, subject to the same statute and the same USOC rules, do report the names of athletes who have positive domestic drug tests to their international federations.

USATF has expressed concern that if it were to disclose more information about positive domestic doping cases to the IAAF, and if the IAAF were to publicize that information and take action against the athlete based on that information, USATF could be subject to costly litigation. However, USATF officials also acknowledge that as a member of the IAAF, USATF cannot maintain a rule or policy that is clearly inconsistent with the rules of its international federation, unless required to do so by US law or USOC regulation. USATF and the IAAF debate whether any IAAF rule clearly requires disclosure of this information in domestic doping cases. The Commission concludes that regardless of whether IAAF rules are subject to varying interpretations, the IAAF is

⁶ Ex. 5, Letter to R. Pound from C. Masback dated October 17, 2000, at 1.

the ultimate arbiter of the meaning of its own rules, and USATF was on notice that the IAAF regarded USATF's failure to provide complete information about domestic doping cases to be counter to the IAAF doping control regime.

In particular, IAAF Rule 21.3(ii) empowers the IAAF to review a member federation's disposition of doping cases and to determine whether to refer a case to IAAF arbitration. The IAAF cannot exercise this authority unless it knows the athlete's identity and the reasons why the member federation decided not to go forward with the case. USATF, by systematically declining to disclose the details of domestic cases that do not go forward, or domestic cases where an athlete is exonerated by a USATF panel, precluded -- and indeed, continues to preclude -- the IAAF from carrying out this power of review.

There were seventeen specific doping cases that the IAAF alleges USATF did not timely report. All seventeen samples were analyzed at the IOC-accredited laboratory at the Indiana University School of Medicine ("the Indianapolis lab"), which, pursuant to IOC regulations, was to report all positive samples -- by sample number only -- to the IAAF and the IOC. USATF did not report these cases of its own initiative to the IAAF, because it did not think it was required to do so, and because it assumed that the Indianapolis lab had done so. As it turned out, the laboratory failed to report these seventeen sample numbers to the IAAF until just a few weeks prior to the Olympics. The IAAF then immediately wrote USATF inquiring about almost all the samples. In response, USATF, consistent with its narrow reading of its own confidentiality rule, provided sparse information about these cases -- but not the information to which the IAAF believed it was entitled. In particular, USATF did not disclose any athlete's identity unless the adjudicatory process had been

completed and a doping violation found. The Commission believes that even within the self-imposed limits that USATF placed on sharing information with the IAAF, USATF should have described more fully the status of cases or the reasons why these cases had been closed.

One of these seventeen cases, moreover, involved an athlete who competed in the 2000 Olympics, and who had previously tested positive for an anabolic steroid. A USATF hearing panel determined that the athlete had committed a doping violation, but the athlete was exonerated by an appeals panel shortly before the 2000 Olympic trials. Thus, USATF had no grounds to exclude the athlete from competition. However, neither did USATF advise the IAAF of the athlete's identity or the basis on which the athlete was exonerated. Thus, the IAAF was prevented from reviewing the case to determine if it should be referred to IAAF arbitration prior to the Olympics.⁷

Whether it was the intended effect or not, USATF's confidentiality policy has in fact impeded the IAAF's authority to enforce its own doping controls on the international level. Moreover, USATF's strong adherence to its confidentiality policy lent credence to the view of some that USATF had something to hide. Thus, rather than protecting athletes' reputations, USATF's policy of nondisclosure may have fostered suspicion that doping goes undetected among US athletes, and may have tarnished the reputations of athletes who do not dope.

3. Whether USATF Timely Disclosed C.J. Hunter's Positive Tests

⁷ In a similar case involving German athlete Dieter Baumann, notwithstanding that the German federation exonerated the athlete, the IAAF conducted its own arbitration and suspended the athlete prior to the Olympics. See Baumann v. International Olympic Committee, Arbitration (As Ad Hoc Division) (O. G. Sydney 2000) 006 (Sept. 22, 2000).

- The Commission found that USATF did not conceal any of C.J. Hunter's positive drug tests from the IAAF, but that USATF should have informed the USOC of those positive tests.

Well in advance of the Olympics, both the IAAF and USATF were aware that several samples given by Mr. Hunter in tests conducted by the IAAF had yielded positive results for nandrolone. Moreover, by late August 2000, both organizations had been informed by Mr. Hunter or his manager that Mr. Hunter was not going to compete in the Olympics. Neither organization believed that it was required to inform either the USOC or the IOC of this, and neither did so.

The Commission is of the view that USATF should have informed the USOC of Mr. Hunter's pending positive tests, or at a minimum, it should have informed the USOC that he was not going to compete in the Olympics. The Commission comes to this view because, at the time that USATF learned of some of Mr. Hunter's positive tests, he was a nominated member of the US Olympic team, and had signed forms submitting to the jurisdiction of the USOC. In April 2000, moreover, the USOC had informed USATF that if an unusual or positive drug test arose after an athlete had been accepted onto the US Olympic team, "the matter will be resolved by the USOC through the Code of Conduct."⁸ USATF asserts that this directive was ambiguous as to whether it applied to positive samples collected in tests administered by the IAAF, or only to domestic tests. Given the overall purpose of the directive, the Commission was not persuaded that it was

⁸ Ex. 6, Letter to C. Masback from S. Blackmun dated April 28, 2000, at 1.

ambiguous, but if USATF believed it to be so, USATF at a minimum should have inquired of the USOC as to how to proceed.⁹

The Commission also notes that the IAAF provisionally suspended Mr. Hunter on August 24, 2000, and again on August 30, 2000, but did not make the suspension public prior to the Olympics. As it was, the USOC did not learn that Mr. Hunter had decided definitively to withdraw until shortly before the September 11, 2000 deadline when final entrants had to be identified for track and field events. At that time, Mr. Hunter's name was removed from the computer system identifying entrants, but because of lack of knowledge of the computerized accreditation process, USOC officials did not take additional steps to remove his name from the separate computer system identifying those entitled to athletes' credentials. Mr. Hunter was thereby able to obtain Olympic credentials to which he was not entitled, which gave him access to areas that were supposed to be accessible only to competitors.

4. Whether USATF Complied With Applicable Anti-Doping Rules And Procedures

In the administration of its doping control program, the Commission found that while USATF complied with certain rules and procedures, it did not do so in several significant areas:

- First, IAAF rules require that an athlete be suspended from competition as soon as the IAAF or a member federation, such as USATF, receives evidence that a doping offense has taken

⁹ Mr. Hunter denies that he knowingly used any banned substance. In early 2001, he decided not to contest the doping charge and to retire from competition. He was declared ineligible to compete for two years by USATF.

place.¹⁰ USATF declined to enforce the IAAF's provisional suspension rule in the US, because it believed that US law precluded it from doing so.

- Second, USATF did not comply with certain of its own doping control regulations, including deadlines and reporting requirements.
- Third, USATF did not meet its obligations to provide the USOC and the IAAF with accurate and current information about athletes' whereabouts, thereby impairing the effectiveness of those organizations' out-of-competition testing programs.

a. USATF Did Not Enforce The IAAF's Provisional Suspension Rule

The charge was made that USATF failed to comply with the IAAF rule requiring that an athlete who tested positive be suspended from competition pending the outcome of a doping case. The Commission found that while USATF declines to impose provisional suspensions before final adjudication of a case, its refusal to do so is premised on its understanding that a federal US statute and the USOC Constitution prohibit USATF from depriving an athlete of the opportunity to compete without a full adjudicatory hearing.

b. USATF Did Not Comply With Certain Of Its Own Rules and Regulations

The Commission found that in 1999-2000, USATF failed to enforce certain of its own rules, as follows:

- The deadlines for requesting or performing "B" sample analyses were sometimes not met.

¹⁰ IAAF Rule 59.2. All rules and regulations cited in this Report shall be those that were in effect in 1999-2000, unless otherwise indicated. Copies of all pertinent IAAF, USATF and USOC rules and regulations may be found at Appendices A-F.

- The deadlines for scheduling hearings were not rigorously enforced, and until recently, USATF made limited effort to monitor hearing panels to ensure hearing deadlines were being met.
- USATF was required to report to the USOC on the status or disposition of cases involving USOC tests. USATF did not routinely do so. On the other hand, the USOC did not inquire or complain about this failure to report.
- For a long period, USATF did not issue public announcements when an athlete was found to have violated doping rules.

c. USATF's Out-Of-Competition Testing Efforts Were Insufficient

- The Commission found no evidence that USATF "covered up" any out-of-competition test by a US athlete, or otherwise manipulated the out-of-competition testing system in order to assist elite US athletes to evade such tests.
- However, the Commission found that during the period under review, USATF routinely provided incomplete and/or out-of-date athletes' whereabouts information to the USOC and the IAAF.

Specifically, USATF was required by the USOC to "implement[] and maintain[] a system to identify and keep track of athletes' whereabouts so that they may be quickly and easily located" for no-advance-notice, out-of-competition testing.¹¹ Similarly, as a member of the IAAF, USATF was to "allow the IAAF to conduct out-of-competition testing on that Member's athletes."¹² In order for it to carry out this out-of-competition testing program, the IAAF relied upon member federations such as USATF to supply it with information about athletes' whereabouts. During 1999-2000, USATF's efforts to satisfy these obligations were insufficient, because on a recurring basis

¹¹ USOC National Anti-Doping Program ("NADP") § 2.3(d).

¹² IAAF Rule 57.1(iii).

USATF provided incomplete and out-of-date athletes' whereabouts information to these organizations.

The USOC believed that, in part due to USATF's failure in this regard, US track and field athletes were far less likely to be tested out-of-competition by the USOC than were athletes in other Olympic sports participating in the USOC out-of-competition testing program. Data relied on by the IAAF additionally showed that US athletes also were more likely to be deemed "no shows" in IAAF out-of-competition testing than were athletes from other countries.¹³

USATF advised the Commission that it is more difficult to keep track of elite track and field athletes than competitors in other sports because they train individually and are extremely transient. Even taking those factors into consideration, the Commission found that USATF did not enforce sanctions or employ other tools that might have improved the quality of the whereabouts information it was able to collect.¹⁴

¹³ When one analyzes all data and information provided to the Commission by the IAAF, USOC and USATF, it appears that during the two years leading up to the Olympics, approximately 75% of the male track and field athletes on the US Olympic team and 68% of the female athletes were tested out-of-competition. The majority of this testing was conducted by the IAAF.

¹⁴ USATF, at the impetus of its member athletes, was the first sports governing body in the US to adopt an out-of-competition testing program and asserts that in view of this pioneering effort, it is being singled out for deficiencies that are relatively minor. USATF further observes that numerous other national federations that are members of the IAAF make no effort whatsoever, or only limited efforts, to maintain an out-of-competition testing program, notwithstanding the IAAF's requirement that they do so. It was beyond the scope of the Commission's work to investigate the sufficiency of other members' programs.

II. BACKGROUND

In order to understand the basis for the Commission's findings, it is necessary to provide an overview of the operation of doping controls that affect track and field athletes, including a description of the organizations that have responsibility for various aspects of these doping controls, as well as the applicable laws, regulations and procedures that govern doping controls.

A. Organizational Structure

Doping control in track and field is conducted by a number of national and international sports organizations, each of which has its own duties and regulations. From an athlete's view, sorting out the respective roles and jurisdiction of these organizations can be complicated. USATF, as the national governing body for track and field in the US, is central to this effort.¹⁵

In the United States, Olympic sport is governed by the Amateur Sports Act, 36 U.S.C.A. §§ 220501 *et seq.* ("ASA" or "the Act"). The Act establishes the USOC and mandates the creation of national governing bodies ("NGBs") for each Olympic sport.¹⁶ The USOC has ultimate authority for recognizing an organization to be the NGB for a particular sport.¹⁷ USATF is the recognized NGB for track and field.

¹⁵ A glossary of all relevant organizations appears as Ex. 7.

¹⁶ ASA § 220521.

¹⁷ ASA §§ 220521-22.

In order to be a recognized NGB, USATF must belong to the international federation for its sport.¹⁸ The International Amateur Athletic Federation ("IAAF") is the international federation that governs track and field competition. USATF is one of more than 211 national federations that are members of IAAF.

With respect to one significant aspect of international competition – the Olympic Games -- the International Olympic Committee is at the apex of the organizational structure. Insofar as the Olympic Games are concerned, both the USOC and the IAAF must follow the pertinent rules and regulations of the IOC.

In addition, the IOC accredits the laboratories that analyze athletes' urine samples collected as part of doping control conducted by national and international anti-doping agencies and by sports federations for all Olympic sports. During 1999-2000, twenty-eight IOC-accredited laboratories operated worldwide.

B. Overview Of The Doping Control Process

Broadly speaking, there are two major categories of performance-enhancing drugs which track and field athletes are prohibited from having in their bodies: "stimulants," such as pseudoephedrine and caffeine, and anabolic steroids, such as nandrolone and stanozolol.¹⁹ Pursuant to IAAF and USATF rules, the penalties for steroid use are more severe than those for using stimulants. An athlete found to have committed a first-time stimulant offense is simply disqualified

¹⁸ ASA § 220522(a)(6).

¹⁹ A third category of banned substances, characterized as amphetamines, carry the same penalties as anabolic agents under both USATF and IAAF anti-doping regulations.

from the event in which he or she tested positive, and given a public warning.²⁰ A second stimulant offense results in a two-year period of ineligibility. An athlete found to have committed a first-time offense for the use of a steroid, by contrast, is declared ineligible to compete for two years.²¹ A second steroid offense results in a lifetime ban from the sport.²²

In 1999-2000, US track and field athletes were subjected to drug tests administered by the USOC on behalf of USATF, and, if they were competing internationally, by the IAAF. Both organizations collected samples in-competition. Both organizations also conducted drug testing on athletes who qualified for an out-of-competition testing pool. This is known as no-advance-notice testing, because once an athlete is in the pool, he or she may be approached by doping control officers without warning and tested at any time when not competing.²³

Regardless of the nature of the test, an athlete would be required to provide a specimen divided into two samples at the time of the test, one labeled an "A" sample and the other a "B" sample. The athlete would also fill out a multi-leafed doping control form, which assigned a

²⁰ IAAF Rule 60.2(b)(i); USATF Regulation 10(D)(9)(b)(i).

²¹ IAAF Rule 60.2(a)(i); USATF Regulation 10(D)(9)(a)(i).

²² IAAF Rule 60.2(a)(ii); USATF Regulation 10(D)(9)(a)(ii). A third stimulant offense also results in a lifetime ban. *See* IAAF Rule 60.2(b)(iii); USATF Regulation 10(D)(9)(b)(iii). The specific substances prohibited by IAAF and the USATF during the relevant period, and the sanctions for their use, are listed in Ex. 8.

²³ In addition, in connection with the 2000 Olympics, Olympic athletes could be subjected to doping controls conducted by Sydney Organizing Committee for the Olympic Games ("SOCOG"), WADA (pursuant to a contract with the IAAF), and the Canadian Center for Ethics in Sport ("CCES"), pursuant to a bilateral agreement between the USOC and the Canadian Olympic Association.

common control number to both samples. The "A" and "B" samples were then shipped to an IOC-accredited laboratory for analysis, accompanied by documentation showing the date and place of sample collection, the sample number, and other data, but not the athlete's name. Only the respective testing agency -- USOC or IAAF -- would receive the doping control form that disclosed the athlete's identity.

All samples collected domestically by the USOC for USATF athletes during 1999-2000 were sent to the IOC-accredited laboratory in Indianapolis. Samples collected by the IAAF were analyzed by whichever IOC-accredited laboratory was chosen by the IAAF to do the analysis.

All IOC-accredited laboratories are required by the IOC to report simultaneously any positive "A" samples, by sample number, to the organization that initiated the test, as well as to the IOC and the IAAF.²⁴ Thus, where the USOC initiated a test on behalf of USATF, the laboratory was required to remit the "A" sample results to the USOC, as well to the IAAF.²⁵ The purpose of this multiple reporting requirement is to ensure that no international federation or national body fails to pursue positive test results to conclusion.

In the case of a test administered by the IAAF, the IAAF would, upon receipt of notice from a laboratory that its analysis had found a positive or irregular "A" sample, correlate the sample number with the doping control form in its records in order to identify the athlete. Pursuant to its Procedural Guidelines, the IAAF would then notify the athlete's national member federation,

²⁴ Olympic Movement Anti-Doping Code, Ch. V, Art. 4(2).

²⁵ Id.

such as USATF, and ask the national body to notify the athlete of the positive "A" sample and to invite the athlete to supply a letter of explanation.²⁶ If the letter of explanation were found unacceptable by the IAAF, it would require the national body to begin the process of adjudicating the case,²⁷ and the IAAF could also suspend the athlete from competition until the case was adjudicated.²⁸ At this point, the IAAF could, pursuant to its own Procedural Guidelines, make public the fact that an athlete had tested positive.²⁹

In the case of a test administered by the USOC, the USOC would, upon receiving notice from the laboratory, correlate the sample number with the doping control form to identify the athlete, and would then ask USATF to notify the athlete.³⁰ In such domestic US doping cases, there is no provision for a letter of explanation; accordingly, USATF upon notification would initiate the adjudication process.³¹ In the interim, USATF would *not* suspend athletes pending adjudication. USATF maintains that the Amateur Sports Act and the USOC Constitution prohibit it from imposing a suspension prior to an evidentiary hearing. (See Part III.D.1, below.) Therefore, USATF athletes

²⁶ IAAF Procedural Guideline 2.51.

²⁷ IAAF Rule 59; IAAF Procedural Guideline 2.54.

²⁸ IAAF Rule 59; IAAF Procedural Guideline 2.54.

²⁹ IAAF Procedural Guideline 2.61 ("Confidentiality shall be observed by all persons connected with doping control until such time as the athlete is suspended in accordance with [Procedural Guideline] 2.54.") The IAAF is in the process of modifying this guideline to withhold public disclosure for three months or until the "B" sample confirms the positive "A" sample, if that occurs sooner.

³⁰ NADP § 6.10.

³¹ USATF Regulation 10 ("Reg. 10") (2000).

who have positive test results pending in domestic doping cases could continue to compete until such time as any hearing process is complete and they are determined to have committed a doping violation.

During the period January 1, 1999 to October 1, 2000 ("1999-2000"), regardless of whether a test was an IAAF test or a domestic test, USATF was responsible for administering this hearing process. As an initial step, the athlete had the right to request that the "B" sample be analyzed.³² If the "B" sample did not confirm the initial positive finding, or if the "B" sample could not be tested for some reason, for all practical purposes the case would be over, and would not go forward. If the "B" sample confirmed the positive "A" sample, the athlete would have the opportunity for a hearing before a panel of arbitrators.³³ The athlete could appeal any adverse finding to an appeals panel.³⁴ If a doping violation ultimately were found, USATF was to impose the appropriate sanction and publicly announce the violation.³⁵

³² Reg. 10(D)(2)(2000); see also IAAF Procedural Guidelines 2.57-2.58. Starting on October 1, 2000, a new entity, the United States Anti-Doping Agency ("USADA"), became responsible for managing the adjudication of doping cases for all US NGBs, including USATF.

³³ For cases arising prior to January 1, 2000, these hearings were conducted before a Doping Hearing Board ("DHB") selected from a panel of volunteers. See Reg. 10(E) (1999). For cases arising in 2000, the hearings were conducted before a hearing panel of the American Arbitration Association ("AAA"). See Reg. 10(E) (2000).

³⁴ During 1999, these appeals were heard by a volunteer Drug Appeals Board, or "DAB." See Reg. 10(E)(3)(1999). Again, for cases arising in 2000, the AAA heard any appeal. See Reg. 10(E)(3)(2000).

³⁵ Reg. 10(E), (G); NADP § 6.17.

The IAAF Rules provided for further proceedings at this point. If an athlete disagreed with an adverse decision or believed the process was unfair, he or she could ask the IAAF Council to refer the matter to the IAAF Arbitration Panel for review.³⁶ Conversely, if the athlete were exonerated by a national federation's hearing process and the IAAF Council believed that the national federation's decision was flawed, the Council could refer the case to arbitration.³⁷ USATF, however, contends that these further IAAF proceedings are available only in IAAF cases, and that the IAAF has no right to submit to arbitration domestic doping cases where a US panel has exonerated an athlete.

C. USATF's Regulations And Practices Regarding Disclosure Of Positive Test Results

As to positive "A" samples arising from IAAF tests, the IAAF, of course, would know the athlete's identity from the outset of the case. When an IOC-accredited laboratory informs the IAAF that a positive "A" sample has been recorded in a domestic doping case, however, the IAAF knows only the sample number and does not know the identity of the athlete. In such cases, the IAAF expects member federations such as USATF to notify the IAAF immediately of the positive "A" sample and the athlete's identity.³⁸

³⁶ IAAF Rule 21.3(i), (iv), (v).

³⁷ IAAF Rule 21.3(ii).

³⁸ The IAAF asserts that this notification is required by IAAF Rule 61.1.

USATF, however, takes the position that its own confidentiality regulation precludes it from disclosing this information to the IAAF in domestic cases.³⁹ Accordingly, during the period under review, USATF did not report any domestic positive test results to the IAAF of its own volition. If the IAAF inquired about a pending domestic doping case, it was USATF's policy to apprise the IAAF in as minimal a fashion as possible of the status of the case. It was also USATF's practice to withhold the name of any athlete testing positive in a domestic doping case, unless and until there was a finding of a doping violation at the end of the adjudicatory process and any appeal, a process which in many cases took more than a year. In the interim, because USATF did not suspend athletes while a doping case is pending, the athlete would be free to compete. Moreover, if an athlete were exonerated for any reason in a domestic doping case, USATF did not identify the athlete to the IAAF and did not share the hearing panel's or appellate panel's decisions with the IAAF.

D. The Origins Of The Current Allegations

For several years, IAAF anti-doping officials had regularly complained about what they viewed as USATF's lack of cooperation and refusal to provide timely and complete information to the IAAF about domestic doping cases in accordance with IAAF rules and procedures. This dispute came to a head two weeks prior to the Olympic Games, when, on August 31, 2000, the IOC-accredited laboratory in Indianapolis informed the IAAF that it may have failed to report a number of positive samples. At that time, the laboratory provided a list of all positive samples, by sample

³⁹ Reg. 10(G) (2000).

number, that it had processed for USATF athletes in the prior 15 months. Until the IAAF received this report from the lab, it was unaware of many of these samples, and immediately wrote USATF inquiring about them. In response, USATF provided summary information about the status of each case, but, consistent with USATF's practices, it declined to identify any athlete whose case was still pending or who had been exonerated. This gave rise to the concern that athletes who had tested positive for performance enhancing drugs might be competing in the Olympics, unknown to the IAAF or the IOC. Specifically, the IAAF asserts that there were seventeen positive domestic tests that USATF failed to report, in violation of IAAF rules.

III. FINDINGS

A. USATF Did Not "Cover Up" Any Positive Tests

The Commission found no evidence that anyone at USATF willfully suppressed any positive drug test by any athlete, or that USATF destroyed any records or otherwise took steps to ensure that a doping case never came to light. The Commission confirmed that all reports of positive samples received by USATF from either the IAAF or the USOC during 1999-2000 were put through the adjudicatory process by USATF. No positive test results were suppressed, destroyed or willfully ignored by USATF officials responsible for doping control. None of the more than 60 witnesses interviewed knew of any efforts by USATF affirmatively to cover up cases of athlete doping.

The Commission also found that USATF did not pursue an audit procedure that had been set in place to help ensure that no positive out-of-competition tests were covered up and that all were properly seen to conclusion through the adjudicatory process. Specifically, the Commission learned that when USATF's out-of-competition testing program was implemented, an independent

auditing firm was retained to audit out-of-competition testing on a semiannual basis. This audit mechanism was adopted to address the concern that, because doping cases were not going to be publicly disclosed prior to final adjudication, there could be a cover-up. The audit was thus considered a fundamental element of the program. However, the Commission found that during 1999-2000, USATF did not receive any final reports from the audit firm.⁴⁰ Accordingly, although the Commission's review determined that no doping cases were in fact covered up, USATF did not avail itself of an existing procedure to help verify that no positive test results were ignored or suppressed.

B. USATF Did Not Adequately Discharge Its Reporting Obligations To The IAAF

1. USATF Reported Adjudicated Violations To The IAAF, But Not Always In A Timely Fashion

Between January 1, 1999 and October 1, 2000, USATF handled twelve domestic or IAAF cases that concluded with a determination that the athlete had committed a doping violation. As to all of these cases, the Commission found that the IAAF was notified of the athlete's identity, the violation and the sanction imposed.⁴¹ All were reported prior to the Olympics; however, reporting was often not accomplished in a timely manner. Of the eight domestic doping cases that concluded in a finding of violation during that period, only two were contemporaneously and

⁴⁰ As of January 2001, when the Commission asked to see copies of the audits, USATF had received only one preliminary draft audit report for the period ending March 31, 1999. No final reports had been completed for the period under review. Eventually, the March 31, 1999 report was finalized and provided to the Commission. No others were completed or provided.

⁴¹ See Chart of Domestic Cases, Ex. 9, Chart of IAAF Cases, Ex. 10.

separately reported to the IAAF.⁴² Another was disclosed to the IAAF two months after the fact. The remaining five domestic doping violations were not separately reported to the IAAF but were listed in USATF's 1999 Annual Report, submitted to the IAAF on March 15, 2000, three to four months after the final adjudication of some of the violations.⁴³

The Commission identified a more serious omission with respect to cases where a violation was found. In all cases, the sanctions were to include public disclosure of the violation.⁴⁴ For a substantial number of these cases, however -- nine of the twelve -- USATF acknowledged that no public announcement was made at the time the athlete was sanctioned. On the basis of the evidence before it, the Commission found that this failure was because of internal management issues, and not due to any illegitimate intent on the part of USATF. In many cases, indeed, USATF doping control staff sent a memo requesting the USATF media staff to prepare a public release. There was no evidence, however, that the media office did so. This failure deprived the sanctions of much of their force, inasmuch as public disclosure is an integral part of the sanction regime designed to deter doping. It also meant that the public at large, worldwide, did not ever learn of these doping violations. This problem was corrected in April 2000.

Delays in reporting violations to the IAAF, and the omission of public notice of violations, have other potentially serious consequences. The IAAF cannot enforce sanctions

⁴² See Chart of Domestic Cases, Ex. 9.

⁴³ The IAAF asserts that this after-the-fact publication in the USATF Annual Report does not satisfy IAAF reporting requirements.

⁴⁴ See Reg. 10(G) (2000); NADP § 6.17.

internationally until it knows of them, and meet organizers may not learn that an entrant is ineligible to compete. USATF advised the Commission that it knew of no athlete in this group who attempted to compete after a sanction was imposed by USATF, but it provided no evidence that it took any steps to ensure that none of these athletes competed.

2. USATF Declined To Disclose Basic Information About Domestic Doping Cases That Did Not Result In A Violation, Thereby Precluding Review By The IAAF

During the pertinent time frame, seventeen domestic doping cases where an athlete had a positive or irregular "A" sample were either pending, or were concluded without a finding of violation.⁴⁵ As to these cases, the Commission finds that USATF applied its confidentiality policy so restrictively that it effectively precluded the IAAF from exercising its authority to review doping cases and to suspend athletes from international competition.

Specifically, there were seven domestic doping cases during 1999-2000 where, notwithstanding the athlete's initial positive "A" sample, the athlete was exonerated or the case was closed because of scientific or practical problems with the "A" or "B" samples, such as the sample being lost or destroyed. Additionally, ten domestic doping cases were pending and unresolved on the eve of the Olympic games.⁴⁶ In all these cases, USATF would, if asked, give the IAAF

⁴⁵ See Chart of Domestic Cases, Ex. 9.

⁴⁶ None of these ten pending domestic cases involved athletes on the Olympic team. There were two pending IAAF stimulant cases involving athletes named to the Olympic team, of which the IAAF was fully aware. These are discussed below in Part IILB.3 below.

abbreviated reports with minimal information on the status of each case. In each such case, however, USATF declined to provide the identity of the athlete or the details of the case.⁴⁷

USATF officials insist that they were prohibited from providing more information by USATF's confidentiality regulation, which at the time was codified as USATF Regulation 10(G).⁴⁸ They also contend that no IAAF rule required them to provide any information at all about domestic doping cases that did not result in a violation.

The Commission finds, however, that USATF chose to interpret its own confidentiality rule in such an unnecessarily restrictive manner that the result was to put USATF in direct conflict with the IAAF. To comprehend the basis for the Commission's conclusion, it is important to set out the applicable USATF and IAAF rules, and to explain their interplay. The pertinent version of Regulation 10(G) provided as follows:

Confidentiality and publication of drug test results: The names of athletes who have tested negative or who have provided valid excuses for failure to appear for testing shall be made available to the public. The names of athletes testing positive shall not be made publicly available until an athlete has been deemed ineligible by a DHB [Doping Hearing Board], or when the finding of the DHB has been reaffirmed by the DAB [Doping Appeals Board], when appropriate. Any other information will be made available only with prior consent of the athlete.⁴⁹

⁴⁷ See, e.g., Ex. 11 (sample redacted letters).

⁴⁸ See Ex. 12, Letter to R. McLaren from C. Masback dated June 28, 2001.

⁴⁹ USATF Regulation 10(G) (1999). This language was substantially the same in the 2000 version of Regulation 10(G):

Confidentiality and publication of test results and doping offenses: The names of athletes who have tested negative or who have provided valid
(continued...)

As stated above, USATF's primary motive for preserving confidentiality in doping cases is to protect the reputation of athletes. Consistent with this purpose, Regulation 10(G), on its face, precludes the *public* release of information about doping cases. It does not, however, expressly or specifically address whether and when the IAAF may be informed of the details of doping cases. Nor does the regulation expressly address the disclosure of information about cases where an athlete initially tested positive but is exonerated, or where no violation is found for some other reason.

The Commission further observes that Regulation 10(G) has not been read to prohibit disclosure to those persons or entities outside the USATF doping control office who have a need to know about cases in order to administer doping controls. At a minimum, those outsiders with such a need to know include members of any hearing board, any potential testifying witnesses (such as the laboratory director), and the lawyers presenting or defending the case. Those with a "need to know" could also be deemed to include the IAAF -- the entity charged with determining eligibility for international competition -- and, in instances where a major competition is upcoming and where the athlete's potential ineligibility could affect the national team, coaches and team management.⁵⁰

⁴⁹ (...continued)

excuses for failure to appear for testing shall upon a final decision having been rendered, be published by USATF. The names of athletes determined to have committed a doping offense shall be published by USATF only after an athlete has exhausted all the domestic administrative proceedings available, including but not limited to a declaration of ineligibility by the AAA or when the findings of the AAA have been reaffirmed by the AAA Appeals Panel, if an appeal has been filed. Any other information will be made available only with prior consent of the athlete.

⁵⁰ See Reg. 10(D)(5), (6).

Regulation 10(G), however, does not explicitly address which parties fall within the sphere of those with a need to know, and specifically does not address whether the IAAF is among that group.

In this regard, it is significant that USATF Regulation 9 states that "[t]he eligibility of an athlete shall be governed by applicable IAAF and IOC rules, except when such rules are inconsistent with United States law," and incorporates by reference the IAAF's anti-doping rules. Accordingly, the Commission believes that US athletes are on notice that the IAAF anti-doping rules will govern their eligibility to compete.

Nonetheless, USATF insists that it is limited in the information it can provide to the IAAF about domestic doping cases. USATF officials have given various explanations as to why they read Regulation 10(G) so restrictively. These explanations were not, in the Commission's view, persuasive.

Initially, USATF suggested to the IAAF that its confidentiality controls were a necessary implication of US law, among other things.⁵¹ However, USATF counsel recognized in 1998 that "[t]he Amateur Sports Act does not address confidentiality issues with respect to athlete doping results,"⁵² and CEO Craig Masback more recently stated that the Amateur Sports Act

⁵¹ Ex. 13, Letter to A. Ljungqvist from C. Masback dated November 11, 1999, at 1 ("Some of the misunderstanding [between the IAAF and USATF] is attributable to the inherent differences between the American and European legal approach to handling and resolving accusations of doping."); *id.* at 2 ("[W]hat you view as an 'uncooperative attitude' is, in fact, USATF's compliance with the laws of the United States and our domestic anti-doping rules. Domestic rules prohibit USATF from revealing the identity of athletes until a final determination has been made . . .").

⁵² Ex. 14, Memorandum to C. Masback from K. Betz dated August 27, 1998.

"provides no statutory guarantee of confidentiality in a process where eligibility to compete is at stake."⁵³ Moreover, in interviews with the Commission, USATF officials and their long-time former outside general counsel, Robert M. Hersh, acknowledged that USATF's confidentiality provision was a matter of USATF policy, and not a legal requirement.

USATF also asserts that it must withhold information about athletes' positive samples from the IAAF because it is required to follow the USOC National Anti-Doping Program ("NADP"), and that sections 6.10 and 6.17 of the NADP require that such information be kept secret unless a violation is found.⁵⁴ Section 6.10, however, imposes a confidentiality requirement on the *USOC's* anti-doping officials, not on USATF:

Any results forwarded [to an NGB] *shall be kept confidential by NADP*, except for notification to the Executive Director of the USOC, until public disclosure pursuant to Section 6.17.⁵⁵

Section 6.17 in turn is a provision that addresses the timing of required disclosure to the *public* of any violation, requiring that "[p]ublic disclosure of an individual's positive Specimen B test result or other offense . . . will be made by the NGB no later than 15 days after the NGB's final

⁵³ Ex. 5, Letter to R. Pound from C. Masback dated October 17, 2000 at 1.

⁵⁴ See also Ex. 15, Letter to G. Dollé from C. Masback dated August 11, 1998; Ex. 5, Letter to D. Pound from C. Masback dated October 17, 2000, at 1.

⁵⁵ NADP § 6.10 (emphasis added).

determination of the matter."⁵⁶ It does not address sharing information about pending doping cases or exonerated athletes with the NGB's international federation.⁵⁷

Significantly, USOC officials and USOC outside counsel uniformly advised the Commission that these two NADP provisions did not prohibit NGBs from providing such information to their international federations. Consistent with this, the Commission learned that other NGBs—governed by the same NADP rules and the same Amateur Sports Act as USATF—routinely notified their international federations of the identity of an athlete who tested positive, prior to full adjudication of the case. Likewise, the protocols of the new United States Anti-Doping Agency ("USADA") call for USADA to inform the pertinent international federation of positive test results in domestic doping cases, long before the conclusion of a case, and regardless of whether the athlete ultimately is found in violation or exonerated.⁵⁸ Accordingly, the Commission, in consultation with counsel, found that there was no impediment in the ASA or in USOC regulations that precluded USATF, if it chose, from adopting a policy of prompt disclosure to the IAAF of positive test results for named athletes.

⁵⁶ NADP § 6.17.

⁵⁷ USATF also asserts that the Memorandum of Agreement ("MOA") between itself and the USOC, pursuant to which the USOC agreed to take over certain aspects of doping control from USATF, requires USATF to maintain the confidentiality of doping cases and precludes it from providing more information about domestic cases to the IAAF. The MOA, however, simply incorporates by reference NADP §§ 6.10 and 6.17, and adds no additional prohibitions on the disclosure of information. See Ex. 16, Memorandum of Agreement effective April 28, 1997, at ¶ 2.

⁵⁸ See USADA Protocol 11, Ex. 17. See also Part IV.D below.

USATF officials said they were unaware of the reporting practices of other NGBs. They also pointed out that during the period in question the IAAF, unlike some other international federations, could suspend an athlete based upon a positive "A" sample. Accordingly, USATF asserts, disclosure to the IAAF is tantamount to pre-hearing suspension, which USATF believes is prohibited by US law. (See below, Part III.D.1.)

Finally, USATF officials told the Commission that it was part of the history of Regulation 10 that the confidentiality provision meant, and has always meant, disclosure to no one -- not even the IAAF.⁵⁹ They conceded, however, that in 1996-1997, more information about domestic doping cases was in fact provided to the IAAF than was provided in 1999-2000. Moreover, the Commission could find no documents from the historic record that evidenced an intent to include a prohibition on disclosure to the IAAF within Regulation 10(G)'s general prohibition on public disclosure.

In talking with numerous people who were involved in shaping USATF's doping control program, and/or who served on USATF's Law and Legislation Committee (which promulgated Regulation 10), the Commission learned the following information on this point: In the United States, USATF was a pioneer in adopting an out-of-competition testing program, and its member athletes were the impetus for this pioneering effort. At the time, as part of their agreement to cooperate in an out-of-competition testing program, the athletes felt strongly that information

⁵⁹ See, e.g., Ex. 18, Letter to R. McLaren from R. Hersh dated May 14, 2001, at 4 ("In spite of the inadequacy of the language, the Regulation was intended to provide for total confidentiality of doping-related information until the final adjudication of a case, through the appellate process, against an athlete.").

about doping cases should not be released *publicly* until such time as a violation was found because the damage done to an athlete's reputation could not be undone, even if the initial positive sample was later to be determined in error. However, these individuals stated that disclosure or nondisclosure to the IAAF was simply not an issue that was considered or addressed when Regulation 10 was first enacted. Nor was it an issue that was considered or addressed over the years as the confidentiality provision of Regulation 10 was modified from time to time. Accordingly, the Commission was unable to document any history behind Regulation 10(G) that would support the conclusion that there was a conscious decision to exclude the IAAF from such information.

Regardless of whether Regulation 10(G) expressly or implicitly prohibits disclosure to the IAAF, a more significant question arises as to whether USATF can maintain a rule that puts it in conflict with the rules of its international federation, when neither US law nor USOC regulation prohibits disclosure to the IAAF. Both Mr. Masback and Mr. Hersh, who currently serves as a member of the IAAF Council, stated to the Commission that USATF is obliged to follow IAAF rules unless those rules conflict with US law or USOC regulation.⁶⁰ Accordingly, if the IAAF clearly required USATF to report all positive tests and the athletes' identities in domestic doping cases, Mr. Masback and Mr. Hersh agreed that USATF could not maintain a policy or rule that prohibited

⁶⁰ See IAAF Rule 2 ("The IAAF shall comprise duly elected national governing bodies for amateur athletics *which agree to abide by the rules and regulations of the IAAF*. . . . The rules and regulations of an elected national governing body *must be in conformity with and not wider than IAAF eligibility rules*." (emphasis added); see also Slaney v. International Amateur Athletic Federation, 244 F.3d 580, 586 n.4 (7th Cir. 2001), *Petition for Certiorari filed* (June 25, 2001) (No. 00-1941) (USATF "is responsible for enforcing the IAAF's rules and regulations.").

disclosure of that information to the IAAF. USATF officials vigorously dispute, however, that any rule of the IAAF clearly requires disclosure of such information, and thus assert that there is no conflict.

First, USATF contends that neither IAAF Rules nor IAAF Procedural Guidelines even govern domestic doping cases handled by USATF. The IAAF concedes that its Procedural Guidelines are not binding on member federations such as USATF.⁶¹ It asserts, however, that members are required to conform with IAAF *Rules*, and further, that the requirement to report information regarding domestic doping cases is explicit in Rule 61.1, and implicit in Rule 21.3.

IAAF Rule 61.1 states in operative part, that "[e]very Member shall inform the IAAF General Secretary of any positive result(s) obtained in the course of doping controls carried out by that Member."⁶² The IAAF contends that this rule requires USATF and other member federations spontaneously to report a positive "A" sample, along with the athlete's identity, regardless of whether the sample was collected by the IAAF or in a domestic test. The IAAF further contends that all

⁶¹ Ex. 19, Letter to J. Pilgrim from G. Dollé dated October 31, 2000.

⁶² IAAF Rule 61.1 reads in full, as follows:

Recognition

Every Member shall inform the IAAF General Secretary of any positive result(s) obtained in the course of doping controls carried out by that Member. These findings shall be considered at the next meeting of the IAAF Council which shall, on behalf of all Members of the IAAF, recognize any positive result(s) obtained. These positive results of doping control carried out by that Member will then be final and binding upon all Members, who shall take the necessary action to render such decision effective.

member federations other than USATF understand that they are required to report all positive samples, along with the athlete's identity, to the IAAF.⁶³

USATF counters that Rule 61.1 does not require such reporting. First, USATF takes the position that a sample is not officially "positive" until it is declared "positive" via the adjudicatory process and a doping violation is found. Second, USATF points out that when the entire Rule 61.1 is read in context (see n.62), it is all the more clear that the phrase "positive result(s)" does not refer to positive "A" samples, but to final, adjudicated doping violations. Rather, USATF contends, the sequence of the IAAF Rules, as well as Rule 61.1's references to "[r]ecognition" of a "final and binding" "decision", make clear that the "final result" referred to is the ultimate finding of a violation, not an initial positive "A" sample, and that Rule 61.1 was intended, as its title suggests, to ensure that other members give full "[r]ecognition" to any final sanctions imposed by a member.⁶⁴

The Commission agrees that Rule 61.1 is written in such a way that it could be subject to varying interpretations. However, pursuant to IAAF Rule 11, the IAAF Council, not the Commission or USATF, is the ultimate arbiter of the meaning of IAAF rules. Although the IAAF Council could have formally addressed the issue, it never did so. IAAF officials made clear to

⁶³ See IAAF Submission at ¶ 3.63. However, it appears that some member federations, such as UK Athletics in the United Kingdom, may withhold this information until the "B" sample is analyzed and confirms the positive "A" sample.

⁶⁴ See Ex. 20, Memorandum to the Independent Review Commission from USATF dated May 15, 2001, at 7-8.

USATF, however, that they believed USATF's policy of nondisclosure was incompatible with IAAF rules.

For several years, in fact, it had been made clear in IAAF Council meetings, as well as in meetings of the IAAF Anti-Doping Commission and in correspondence from IAAF doping control officials, that the IAAF was dissatisfied with the lack of information provided by USATF with regard to domestic doping cases. This view was recorded in the Report of the IAAF Anti-Doping Commission adopted in the Minutes of the IAAF Congress Meeting in Seville, Spain in August 1999, one year prior to the Olympics, which states:

Difficulties with Federations and various administrative problems were experienced, notably the systematic delay in disciplinary procedures in the USA in addition to *the uncooperative attitude of USATF*. Using the excuse of differences between their Rules and those of the IAAF, the known American cases (*though some are kept deliberately unidentified due to USATF's refusal to reveal the athlete's identity*) are usually dealt with and concluded in a way which is different from how athletes are judged in the rest of the world. USATF does not apply the IAAF provisional suspension rule after a positive "A" sample and athletes are often exonerated. This policy gives cause to grave concern and is unacceptable.⁶⁵

USATF responds that until the dispute over reporting to the IAAF came into public view at the Sydney Olympics, no one at the IAAF had ever specifically informed USATF that Rule 61.1 required immediate, spontaneous reporting of an athlete's identity and the fact that the athlete had a positive "A" sample in a domestic case. USATF also notes that the IAAF had the authority to sanction USATF for failing to comply with this rule, but that the IAAF never took that step.

⁶⁵ Ex. 21, Minutes, 42d IAAF Cong., at 125 (emphasis added).

Moreover, USATF insists that only the IOC-accredited laboratories are under any duty to report positive "A" samples to the IAAF. Therefore, USATF officials told the Commission, unless and until the IAAF Council officially and explicitly advises USATF that Rule 61.1 requires it to report spontaneously the athlete's identity upon receipt of notice of a positive "A" sample, USATF is not obligated to do so. Further, USATF felt that it had no obligation to seek a clarification of the rule. Rather, USATF asserts that the burden was on the IAAF to move to clarify the rule.⁶⁶

While USATF's position in this respect might arguably be defensible, the Commission finds that it is inconsistent with USATF's commitment to work with the IAAF to combat doping on the international level, especially when USATF is not constrained by law or USOC regulation to withhold information from the IAAF. In these circumstances, USATF's inflexible adherence to such a restrictive confidentiality policy may lend credence to the view of some that USATF has something to hide.

Moreover, the Commission agrees that the duty to disclose such information is inherent in IAAF Rule 21.3(ii). Pursuant to that rule, the IAAF Council is authorized to refer a

⁶⁶ USATF further asserts that the IAAF cannot be relied upon to maintain the confidentiality of information about pending doping cases, and hence, that disclosure to the IAAF is tantamount to public release. However, a conflict about public release would exist regardless of whether the IAAF "leaked" the information or disclosed it in accordance with its own regulations. Under IAAF Procedural Guidelines in effect during 1999-2000, the IAAF was authorized to release information about doping cases very early in the progress of a case -- much earlier than envisioned under USATF's Regulation 10(G). Specifically, if it chose to do so, the IAAF could publicly disclose the matter at the time an athlete was suspended (see IAAF Procedural Guidelines 2.61), which suspension could be imposed based on a positive "A" sample if the athlete failed to submit an acceptable explanation. See IAAF Procedural Guidelines 2.51, 2.54. Thus, the question remains as to whether USATF can decline to comply with IAAF rules and procedures with which, as a policy matter, it disagrees.

doping case to the IAAF's Arbitration Panel if the IAAF believes a member federation has not appropriately handled the case or has reached an inappropriate result.⁶⁷ The IAAF interprets this rule as empowering the Council to review domestic doping cases where an athlete is exonerated, or where the case is closed by a member federation for some other reason, and to decide whether to refer the matter to arbitration for a determination as to whether international sanctions should be imposed. Indeed, the IAAF has done so in certain domestic cases from other countries.⁶⁸

It is self-evident that unless the IAAF learns the identity of the athlete and the reasons why a case did not go forward, it cannot make a judgment as to whether the member federation "misdirected itself" under Rule 21.3(ii). USATF, by declining to disclose the details of domestic cases where an athlete is exonerated by a USATF panel, thereby prevents the IAAF from carrying out this power of review. Moreover, USATF's contention -- that Rule 21.3(ii) applies only to IAAF cases -- is inconsistent with the rule as a whole when considered in conjunction with the rule's policy

⁶⁷ Specifically, Rule 21.3(ii) provides that a matter may be submitted to arbitration

[w]here a Member has held a hearing under Rule 59, and the IAAF believes that in the conduct or conclusions of such hearing the Member has misdirected itself, or otherwise reached an erroneous conclusion.

⁶⁸ USATF asserts that the IAAF's authority to review the handling of cases by a member federation under Rule 21.3(ii) comes into play only when the member had been adjudicating a case based on an IAAF-initiated test. This contention is contradicted by the past practices of the IAAF, which contain many examples of cases where the IAAF has referred domestic doping cases to IAAF arbitration. According to IAAF, these include the case of German athlete Dieter Baumann, U.K. athletes Mark Hylton and Mark Richardson, and Czech Republic athlete Ramon Zubek, as well as US athlete Mary Decker Slaney. Accordingly, the IAAF clearly has conducted its doping controls under the premise that this rule applies to both domestic and IAAF tests.

goal of assuring that tainted athletes do not compete internationally. This goal is the same regardless of whether the evidence of doping arises in a domestic test or an IAAF test.⁶⁹

The IAAF charges that USATF, "by invoking its own confidentiality rule, . . . has *deliberately* sought to avoid the consequences of IAAF Rule 21.3(ii)."⁷⁰ IAAF officials, indeed, believe that USATF tightened restrictions on information sharing following USATF's experience in the Slaney case. The Slaney case was premised on a domestic doping test administered at the US Olympic trials in 1996. When a USATF panel exonerated Ms. Slaney in October 1997, the IAAF referred the case to arbitration and suspended her. After what has been reported as a bitter and rancorous arbitration in which both USATF and the athlete withdrew from participating, the IAAF in 1999 declared Ms. Slaney ineligible in international competition.⁷¹

⁶⁹ Moreover, USATF concedes that other subsections of Rule 21.3 give athletes the opportunity to appeal adverse rulings in domestic doping tests to the IAAF. *See, e.g.*, Rule 21.3(i), (iv), (v). It thereby recognizes the IAAF's jurisdiction over some domestic cases, while not recognizing it in cases where the athlete is exonerated. *See* Ex. 18, Letter to R. McLaren from R. Hersh dated May 14, 2001, at 2-3.

⁷⁰ IAAF Submission at 54 (emphasis added).

⁷¹ Ms. Slaney subsequently sued both the IAAF and the USOC in federal court, raising numerous state-law contract and tort claims against both organizations and asserting that both organizations had violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"). The court dismissed all claims, which dismissal was affirmed by the United States Court of Appeals for the Seventh Circuit. *Slaney v. IAAF*, 244 F.3d 580 (7th 2001 Cir.). The Court of Appeals specifically held that Slaney could not sue the IAAF because she participated in a "valid arbitration with the IAAF," which US federal courts are required to recognize. The Court further held that the Amateur Sports Act preempted all state-law claims against the USOC and that the Act did not provide for a private right of action under which Slaney could pursue her claims. As for the RICO claims, the Court of Appeals commented that "Slaney's claim does not come close to fitting the family of claims Congress
(continued...)

Almost all international witnesses interviewed by the Commission believe that the Slaney case was a watershed in relations between USATF and the IAAF. USATF states that its policy against disclosure of information about exonerated athletes did not change after the case, but USATF did not report the name or details of any domestic exoneration case to the IAAF since the Slaney case was decided. As a result, the IAAF has not been able to scrutinize any such cases pursuant to IAAF Rule 21.3(ii), which is of serious concern to the Commission.⁷²

An additional reason why USATF has become more restrictive about disclosure to the IAAF appears to be USATF's concern over the threat of litigation. Specifically, USATF asserts that if it discloses information about positive test results to the IAAF, and if the IAAF on that basis publicizes the results and suspends the athlete internationally, the affected athlete will sue USATF. Although concerns about the diversion of management time and financial resources to the defense of such litigation, whether well founded or not, may be understandable, the Commission notes that

⁷¹ (...continued)
intended the RICO statute to cover." Id. at 600. Ms. Slaney has asked the United States Supreme Court to review the decision.

⁷² After the IAAF began pressing for information about exoneration cases, moreover, USATF in 1999 added a sentence to Regulation 10(G) that allowed individual athletes to control dissemination of information about such cases. See Reg. 10(G) (2000) ("Any other information will be made available only with prior consent of the athlete."). Based on this amendment, USATF recently began sending letters to athletes whose cases were closed without a finding of violation, informing them of the IAAF's request for information about their cases, asking if they would consent to release of the information, and advising them that "[t]he intent of the IAAF is to review these cases in order to assess whether or not the case should be recommended for IAAF arbitration." Ex. 22. USATF asserts these recent amendments to the confidentiality rule were intended "as only a clarification" to the pre-existing understanding of the scope of the rule. See Ex. 18, Letter to R. McLaren from R. Hersh dated May 14, 2001, at 4.

the Amateur Sports Act has been held time and again to preclude private causes of action by athletes.⁷³ Moreover, the IAAF, not USATF, would have been responsible for the actions which the athlete alleged were injurious. With respect to cases where an athlete was exonerated, if the process by which the athlete is exonerated is fair and the result defensible, the Commission believes an athlete should be willing to defend the decision in the face of IAAF, or indeed, public scrutiny.⁷⁴

In any event, the IAAF, if it so chooses, has the right to impose international suspension on the basis of positive samples, and in order to effectuate such a suspension, it is necessary for the IAAF to know the identity of the athlete. USATF should not conduct its operations so as to impede the IAAF's legitimate exercise of its own authority in the international arena.

Further, while USATF asserts that it is vigorous in its anti-doping efforts notwithstanding its position on confidentiality, the Commission believes that a matter of such import cannot be left to the unsupervised good-faith intention of a national governing body. Effective anti-doping efforts require the commitment of all national federations to adhere to the greatest extent

⁷³ See, e.g., Slaney, 244 F.3d at 594; Michels v. United States Olympic Comm., 741 F.2d 155, 157 (7th Cir. 1984); DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181 (D.D.C. 1980). But see Sternberg v. U.S.A. Nat'l Karate-Do Fed'n, Inc., 123 F. Supp.2d 659, 664-66 (E.D. N.Y. 2000) ("narrow right of action regarding sex discrimination by national governing sports bodies may be implied" in Act); Foschi v. United States Swimming, 916 F. Supp. 2d 232, 238-40 (E.D.N.Y. 1996) (swimmer challenging suspension may proceed with state common-law claims against national governing body).

⁷⁴ The Commission does agree, however, with the suggestion made by USATF and other national federations that the IAAF should consider whether Rule 21.3 can be modified to reflect the reality that the real parties in interest in any such arbitration are the IAAF and the athlete, not the IAAF versus the member national federation.

possible to the rules of their international federations, so that the international federation can oversee the anti-doping practices of its members and, where appropriate, intervene.

Indeed, based on its review of USATF hearing panel decisions exonerating US athletes, the Commission believes that the IAAF may well have referred certain of these cases to arbitration had it been provided copies of the decisions. Thus, whether it was the intended effect or not, USATF's confidentiality policy has in fact impaired the IAAF's authority to enforce its own doping controls on the international level.

3. The Commission Reviewed 17 Cases That IAAF Asserts Were Unreported

The IAAF asserts that USATF failed to "report" seventeen cases where a US athlete recorded a positive "A" sample in a domestic test, and that it learned of them only when the Indianapolis laboratory wrote the IAAF, on August 31, 2000, two weeks before the opening of the Sydney Games. (See Part V.B. below.) USATF insists that it did "report" these seventeen cases to the IAAF, in as much detail as permitted by its confidentiality rule.

The Commission concludes that there is support for both positions. When asked by the IAAF, USATF did provide some summary information about these cases -- but not all of the information to which the IAAF believed it was entitled. In particular, USATF did not immediately report the existence of positive "A" samples to the IAAF, and did not disclose any athlete's identity unless and until a violation was found at the end of the adjudicatory process.

Six of the seventeen cases involved athletes who were found in violation prior to mid-March 2000. These athletes and their violations were listed, by name, in USATF's 1999 Annual

Report to the IAAF, delivered on March 15, 2000.⁷⁵ However, the cases identified by the Indianapolis laboratory on August 31, 2000 were identified only by sample number. The IAAF did not link those cases to the ones reported in the 1999 Annual Report.

In the other cases, the information that USATF provided was so limited that it could have given some the impression of a cover-up. For example, in several cases where the case was closed because of the Indianapolis laboratory's mishandling of a sample, the IAAF was told only that the case was closed "in favor of the athlete."⁷⁶ Even within the bounds that USATF puts on disclosure of information, it should have described more completely the reasons why these cases did not go forward.⁷⁷

A chart summarizing each of the seventeen cases appears at Exhibit 24.

With respect to whether USATF provided information about these cases to the IAAF prior to October 1, 2000, the Commission found as follows:

1. USOC #6: On May 24, 1999, USATF was informed by the USOC that this athlete tested positive for a stimulant (pseudoephedrine). USATF did not inform the IAAF

⁷⁵ See Ex. 23 (excerpt from USATF 1999 Annual Report to IAAF).

⁷⁶ See, e.g., Chart of 17 "Unreported" Cases, Ex. 24, USOC #6.

⁷⁷ In addition to these seventeen cases, the IAAF was unaware of a domestic out-of-competition test where it was alleged that the athlete refused to submit to testing. See Chart of Domestic Cases, Ex. 24, USOC #7. USATF said this case was not reported to the IAAF because the IAAF did not inquire about it; however, because refusal-to-test cases do not generate any samples to be analyzed, the IAAF would not have learned of this case from the laboratory, and hence would not have known to ask about it. This is another reason why the IAAF asserts that member federations have an obligation, independent of the laboratories, to report domestic cases. The athlete ultimately was exonerated in this case, but the IAAF was not told this at the time, or the reasons for the exoneration.

at that time. The case was closed in July 1999, due to an error at the Indianapolis laboratory, which inadvertently discarded both the "A" and "B" samples. The IAAF first inquired about the matter on September 5, 2000, after learning about the positive "A" sample from the Indianapolis laboratory. USATF immediately confirmed the existence of the case, but informed the IAAF only that the "matter has been resolved in favor of the athlete."

2. USOC #8: USATF was notified by the USOC on July 15, 1999, that this junior athlete tested positive for a stimulant (pseudoephedrine). USATF did not inform the IAAF at that time. In March 2000, the athlete was found in violation and was disqualified from the event where the athlete had given the sample. The athlete's name and violation were listed in USATF's Annual Report to the IAAF, but the USATF communications staff apparently failed to issue a required public warning, even though it had been requested to do so by the doping control staff.
3. USOC #9: USATF was notified by the USOC on July 6, 1999, that this junior athlete's "A" sample reflected an elevated testosterone/epitestosterone ("T/E") ratio. USATF did not inform the IAAF at that time. The case was referred to a USOC T/E panel in June 2000 for a determination as to whether the T/E ratio was naturally occurring or evidence of doping.⁷⁸ The IAAF first inquired about the matter on September 6, 2000, after learning about the "A" sample from the Indianapolis laboratory. USATF confirmed the existence of the case, but informed the IAAF that the case was still being investigated by the USOC and that it could not disclose the identity of the athlete.⁷⁹
4. USOC #10: USATF was notified by the USOC on July 15, 1999, that this junior athlete had tested positive for a stimulant (ephedrine). USATF did not inform the IAAF at that time. In February 2000, the athlete was found in violation and was disqualified from the event where the athlete had given the sample. The athlete's name and violation were listed in USATF's Annual Report to the IAAF. The USATF

⁷⁸ For a detailed discussion of T/E issues, and the delay occasioned by the dispute between USATF and the USOC concerning which organization was responsible for conducting the longitudinal studies required in T/E cases, see Part IV.B below.

⁷⁹ In November 2000, the USOC panel determined that the elevated T/E ratio was a natural condition, and the case was closed. The IAAF was so informed on November 15, 2000. The athlete denied permission to USATF to disclose the athlete's name or the details of the case to the IAAF.

communications staff apparently failed to issue a required public warning, even though it had been requested to do so by the doping control staff.

5. USOC #11: USATF was notified by the USOC on July 15, 1999, that this junior athlete had tested positive for a stimulant (pseudoephedrine). USATF did not inform the IAAF at that time. In November 1999, the athlete was found in violation and was disqualified from the event where the athlete had given the sample. The athlete's name and violation were listed in USATF's Annual Report to the IAAF. The USATF communications staff apparently failed to issue a required public warning, even though it had been requested to do so by the doping control staff.
6. USOC #12: USATF was notified by the USOC on July 6, 1999, that this athlete had tested positive for a steroid (nandrolone) and elevated T/E ratio. USATF did not inform the IAAF at that time. The case was referred to a USOC T/E panel in June 2000, for a determination as to whether the T/E ratio was naturally occurring or evidence of doping. For unexplained reasons, USATF deferred the adjudication of the nandrolone positive pending the outcome of the T/E evaluation. The IAAF first inquired about the matter on September 5, 2000, after learning about the positive "A" sample from the Indianapolis laboratory. USATF confirmed the existence of the case, telling the IAAF only that the matter was being investigated by the USOC, but declining to reveal the identity of the athlete.⁸⁰
7. USOC #13: On July 6, 1999, USATF was notified by the USOC that this athlete had tested positive for a steroid (nandrolone). USATF did not inform the IAAF at that time. In March 2000, a USATF hearing panel found the athlete had committed a doping violation, and imposed a suspension in April 2000. A USATF appeals panel exonerated the athlete in July 2000, and the suspension was lifted. The IAAF first inquired about the matter on September 5, 2000, after learning about the positive "A" sample from the Indianapolis laboratory. USATF immediately confirmed the existence of the case, but informed the IAAF only that the "matter had been resolved in favor of the athlete." Subsequent IAAF requests for copies of the opinions and the

⁸⁰ On November 15, 2000, the USOC informed USATF of its determination that the elevated epitestosterone was not a naturally occurring condition, and USATF undertook to proceed with a hearing on this athlete. Despite repeated attempts to notify the athlete, the athlete did not respond. Therefore, the athlete was declared in violation based on the elevated epitestosterone finding. Nonetheless, because the athlete had requested a hearing on the nandrolone positive in 1999, USATF decided that it was obliged to hold a hearing on that alleged violation, regardless of whether the athlete responded. As of June 2001, the hearing had not taken place.

case file were also denied. This athlete participated in the Olympics. See Part III.B.4 below.

8. USOC # 14: USATF was notified by the USOC on September 22, 1999, that this athlete tested positive for hCG (human Chorionic Gonadotrophin). USATF did not inform the IAAF at that time. In December 1999, the Indianapolis laboratory determined that the "B" sample was negative, in that the concentration of hCG present fell below the threshold level, and the case was closed. The IAAF states that this matter was among those identified, by sample number, by the Indianapolis laboratory on August 31, 2000, but there is no record that the IAAF asked USATF about the sample. USATF states that the lab had previously informed the IAAF that this "A" sample was not confirmed by the "B" analysis. In any event, because the IAAF never inquired, USATF did not provide it with any information about the case, or the athlete's identity, prior to this investigation.

9. USOC #15: On August 31, 1999, USATF was notified by the USOC that this athlete had tested positive for a stimulant (phentermine) in an out-of-competition test. USATF did not inform the IAAF at that time. Having waived the right to a hearing, the athlete in November 1999, was found to be in violation and was to have been sanctioned with a public warning. The athlete's name and violation were listed in USATF's Annual Report to the IAAF. The USATF communications staff apparently failed to issue a required public warning, even though it had been requested to do so by the doping control staff. Hence, the only sanction imposed for this violation was never in fact levied.⁸¹

10. USOC #16: USATF was notified by the USOC on February 8, 2000, that this athlete tested positive for a steroid (nandrolone). USATF did not inform the IAAF at that time. Just before the matter was set for hearing by an AAA panel, the Indianapolis laboratory determined there had been a break in the chain of custody for the "A" sample. As a result, the case was dismissed in August 2000, via a consent award in which USATF agreed not to disclose the athlete's identity or any other information

⁸¹ The IAAF additionally asserts that because this was a reinstatement test administered in follow-on to a violation recorded against the athlete based on an IAAF test, the test results clearly should have been reported immediately to the IAAF. Had the IAAF been notified, it asserts, it would have advised USATF that under its Procedural Guidelines, the substance at issue -- phentermine -- is not subject to out-of-competition testing; it is only a violation if detected in competition. In response, USATF points out that pursuant to IAAF Rule 57.5, prior to regaining eligibility, an athlete seeking reinstatement "must undergo testing for the full range of prohibited substances."

to the IAAF, other than that the case had been "dismissed by an independent arbitration panel." The IAAF first inquired about the matter on September 8, 2000, after learning about the positive "A" sample from the Indianapolis laboratory. USATF responded only that "this matter was resolved in favor of the athlete," and did not identify the athlete or the reason why the case was closed. It refused subsequent IAAF requests for access to the case file.

11. USOC #17: USATF was notified by the USOC on March 13, 2000, that this athlete tested positive for a stimulant (ephedrine). USATF did not inform the IAAF at that time. The athlete requested a hearing in August 2000. The IAAF learned of the positive sample on August 31, 2000, from the Indianapolis laboratory, but did not inquire about the case until October 24, 2000. At that time, the IAAF was informed that the case was at the hearing stage, but USATF declined to identify the athlete or provide details.⁸²
12. USOC #18: USATF was notified by the USOC on May 25, 2000, that this athlete's sample reflected an elevated T/E ratio. USATF did not inform the IAAF at that time. The matter was referred to the USOC T/E panel for further investigation in July 2000. The IAAF first inquired about this sample on September 14, 2000, after learning about it from the Indianapolis laboratory. USATF advised the IAAF that the case was "still in the process of being investigated by the USOC," and declined to identify the athlete.⁸³

⁸² The hearing process in this case was not completed until April 2001, at which time an AAA panel decided the case in favor of the athlete. As of the Commission's final review of USATF files, there was no evidence that the IAAF had been informed of this result. The panel's decision rested on its conclusion that the Indianapolis laboratory was unable to establish chain of custody, and had experienced problems with its equipment and quality control procedures. In addition, at the request of the athlete, the AAA panel issued a subpoena for evidence from the lab, which USATF did not support.

⁸³ The USOC T/E panel evidently consolidated this case with an earlier T/E case involving the same athlete. In June 2001, the USOC provided the IAAF with a copy of the T/E panel's decision with regard to that earlier case, finding that the athlete's testosterone level was naturally elevated. Because, however, the IAAF had not been informed that the two cases had been consolidated, the IAAF continued to ask USATF about the status of USOC #18. On June 26, 2001, USATF informed the IAAF that the samples from both tests had been reviewed by the T/E panel as part of its longitudinal study.

13. USOC #19: On July 13, 2000, USATF was notified by the USOC that this junior athlete had tested positive for a substance called Methylphenidate. USATF did not inform the IAAF at that time. The IAAF first inquired about this sample on September 14, 2000, after learning about it from the Indianapolis laboratory. USATF informed it on September 15, 2000, that the matter was still in the process of being investigated by the USOC, and declined to provide the athlete's name or details.⁸⁴
14. USOC #20: USATF was notified by the USOC on July 13, 2000, that this junior athlete's "A" sample had evidenced an elevated T/E ratio. USATF did not inform the IAAF at that time. The case was referred to the USOC T/E panel in September 2000. The IAAF first inquired about the case on September 14, 2000, after learning about it from the Indianapolis lab. On September 15, 2000, USATF informed it that this case was still being investigated by the USOC, and declined to identify the athlete.⁸⁵
15. USOC #21: USATF was notified by the USOC on July 13, 2000, that this junior athlete tested positive for a stimulant (pseudoephedrine). It did not inform the IAAF at that time. The athlete waived the right to a "B" sample and a hearing, and was found in violation in July 2000. The athlete was sanctioned with disqualification from the event where the sample was taken, and with a public warning; there is no evidence, however, that a public warning issued at the time. The IAAF first inquired about the case on September 14, 2000, after learning about it from the Indianapolis lab. USATF informed the IAAF of the athlete's identity and violation.⁸⁶
16. USOC #23: On July 24, 2000, USATF was notified by the USOC that this athlete had tested positive for a stimulant (pseudoephedrine) at the Olympic trials. USATF did not inform the IAAF at that time. The IAAF first inquired about the case on September 14, 2000, after learning about it from the Indianapolis lab. USATF

⁸⁴ In February 2001, an AAA hearing panel found in favor of the athlete on the grounds that Methylphenidate is not clearly a prohibited substance under IAAF or USATF rules. According to the IAAF, however, it is a "serious amphetamine" that would have subjected the athlete to a two-year period of ineligibility had a violation been found. As of June 2001, there was no evidence that USATF informed the IAAF of this outcome or provided to IAAF a copy of the hearing panel's decision.

⁸⁵ In July 2001, the USOC T/E panel informed USATF that it had determined that this athlete had a naturally elevated T/E ratio, and the case was closed.

⁸⁶ USATF eventually issued a public notice on October 27, 2000, some four months after violation was found.

informed the IAAF that the case was pending and that it could not confirm the athlete's identity. This athlete was not a member of the US Olympic team, but the IAAF could not have known that at the time.⁸⁷

17. USOC #24: On August 1, 2000, USATF was notified by the USOC that this athlete had tested positive for amphetamine. This positive was recorded in the fourth round of no-advance-notice reinstatement testing in connection with a prior violation.⁸⁸ USATF did not inform the IAAF at the time, however, and evidently treated the positive as a potential separate doping offense. The IAAF learned of the positive sample from the Indianapolis laboratory on August 31, 2000, but made no inquiry at that time. On October 12, 2000, IAAF separately inquired about the status of reinstatement testing for the athlete, by name, evidently unaware that this sample pertained to the same athlete. In response, USATF responded only that the athlete was "in the process of undergoing reinstatement," and that the IAAF would be notified when and if the athlete successfully completed reinstatement. It did not inform the IAAF that the athlete had, in fact, recorded a positive sample as part of the reinstatement testing. As of June 29, 2001, the American Arbitration Association had not yet held a hearing in this case.⁸⁹

⁸⁷ An AAA hearing panel concluded in April 2001 that a violation had occurred in this case. The athlete did not appeal, and USATF issued a public announcement on May 2, 2001.

⁸⁸ The athlete had earlier been declared ineligible after testing positive for a banned substance, and had tested negative in three prior reinstatement tests.

⁸⁹ In addition to the cases set forth in this section of the Report, the IAAF initially indicated that it had not received information about eighteen incidents of positive samples for salbutamol. Salbutamol is a substance that is often used by asthma sufferers and is permitted only when prescribed by a physician and when prior clearance has been given by the IAAF or the USOC.

According to a letter from the USOC to USATF dated July 30, 1999, the Indianapolis laboratory initially determined that eighteen athletes tested positive for salbutamol at a particular USOC event. After USATF indicated certain irregularities with respect to some tests, however, the Indianapolis lab determined that five of the eighteen presumptive positives were in fact negative for salbutamol. It does not appear that the Indianapolis lab informed the IAAF that five of the initial salbutamol positive reports were in fact not positive. In addition, the USOC had on file medical certificates from twelve of the remaining thirteen athletes with tests positive for salbutamol. Finally, one athlete provided to the
(continued...)

4. The IAAF Was Unable To Review The Case Of One US Olympic Team Member Who Was Exonerated On A Doping Charge

Of the seventeen domestic cases where the athlete's identity was not disclosed to the IAAF, many were junior athletes or others not likely to qualify for the Olympic team.⁹⁰ Additionally, many of these cases involved first-time findings of the presence of stimulants, such as ephedrine. In these cases, a violation would not have precluded the athlete from participating in the Olympics. However, the sparse information that USATF provided to the IAAF about these cases was so abbreviated that the IAAF would not have known this.

One case involved an athlete who competed in the 2000 Olympics, who had tested positive for the presence of an anabolic steroid.⁹¹ The athlete was found to have committed a doping

⁸⁹ (...continued)
USOC a submission from a physician indicating that the athlete had been a life-long asthma sufferer and that the physician had prescribed salbutamol for the athlete long before the athlete was tested.

USATF asserts that it never received the July 30, 1999 letter or attached information from the USOC. In 2000, the IAAF learned of the presumptive positive samples from the Indianapolis lab. The IAAF then asked USATF for information about them. Specifically, on September 13, 2000, the IAAF asked USATF to provide the IAAF with information regarding whether USATF had provided exemptions to any of the 18 athletes who, according to the information the IAAF had received, had tested positive for salbutamol. USATF did not respond, and on October 17, 2000 the IAAF again requested information on the 18 athletes. On October 25, 2000, USATF informed the IAAF as follows: "The so called '18 adverse findings of salbutamol' identified in your letter were **never** reported to USATF." (Emphasis in original.)

⁹⁰ See Chart of 17 "Unreported" Cases, Ex. 24.

⁹¹ See Chart of 17 "Unreported" Cases, Ex. 24, USOC #13.

violation by a USATF hearing panel, but was exonerated by an appeals panel just prior to the 2000 Olympic trials. As a result, USATF had no grounds to preclude this athlete from participating in the trials or in the Olympics.

When this athlete's case was appealed, USATF officials defended the initial finding of a violation and strongly disagreed with the appeals panel's exoneration of the athlete. However, consistent with its restrictive reading of its own confidentiality policy, USATF did not inform the IAAF of the athlete's identity and did not allow the IAAF to review the hearing panel or appellate panel decisions. Hence, the IAAF did not have the opportunity to assess independently whether it should conduct its own arbitration to determine if international sanctions should be applied.⁹²

Other than C.J. Hunter, discussed below, there were two additional athletes who were named to the US Olympic team who had pending but unresolved doping cases at the time of the Sydney Games. Both involved stimulants.⁹³ Since both cases were premised on tests administered by the IAAF, both were known to the IAAF prior to the Olympics, and no charges of cover-up can be associated with these cases. Moreover, had a violation been found in either case prior to the Olympics, this would not have resulted in either athlete's disqualification from the Sydney Games,

⁹² In a similar case arising in Germany, involving the athlete Dieter Baumann, notwithstanding that the German federation exonerated the athlete, the IAAF imposed its own suspension and precluded Mr. Baumann from participating in the Olympics. See Baumann v. International Olympic Committee, Arbitration (As Ad Hoc Division) (O. G. Sydney 2000) 006 (Sept. 22, 2000).

⁹³ See Chart of IAAF Cases, Ex. 10, IAAF #3 (caffeine), IAAF #6 (ephedrine). Another athlete had a positive test for pseudoephedrine at the Olympic trials, but the athlete did not make the team in any event. See Chart of Domestic Cases, Ex. 9, USOC #23.

because both would have been first-time doping offenses for stimulants, a violation which does not result in any period of suspension or ineligibility. Additionally, these athletes did not rely on the events in which their positive samples were recorded to qualify for the Olympic trials or the Olympic team.

C. The C.J. Hunter Matter

Five weeks prior to the Olympics, both USATF and the IAAF became aware that a sample taken from C.J. Hunter in a test administered by the IAAF had tested positive for the presence of nandrolone. Within a few weeks, these organizations learned that three other IAAF test samples given by Mr. Hunter during the summer of 2000 had likewise tested positive for nandrolone. Neither organization informed the public, the USOC, or the IOC of these facts, because neither believed they had an obligation to do so. Additionally, both organizations were informed by Mr. Hunter and/or his manager several weeks prior to the Olympics that Mr. Hunter did not plan to compete in the Olympics. Neither organization, however, notified the USOC or the IOC of Mr. Hunter's situation. Mr. Hunter, moreover, did not notify the USOC of his decision to withdraw from the Olympic team until shortly before the Olympics began, and as late as September 7 he was reported to have publicly stated that he hoped to overcome an injury and compete in the Olympics.⁹⁴ When USOC officials finally learned of Mr. Hunter's withdrawal, they took steps to remove Mr. Hunter's name from the final list of competitors, but did not realize that his name remained on

⁹⁴ *World Shot Put Champion Has Surgery, Olympic Status Uncertain*, Associated Press, Sept. 7, 2000; Gene Cherry, *C.J. Hunter Undergoes Knee Surgery, Questions Status*, Raleigh News and Observer, Sept. 6, 2000.

the computerized list of those entitled to team credentials. Therefore, Mr. Hunter was able to obtain athlete's credentials, which allowed him access to restricted areas during the Olympics.⁹⁵

1. USATF Did Not Conceal From The IAAF Any Positive Drug Test By C.J. Hunter

As noted above, each of the four tests involving C.J. Hunter was administered by the IAAF, not by the USOC. Thus, in each instance, the IAAF was aware that Mr. Hunter had tested positive for nandrolone before the USATF became aware of the fact. Accordingly, the question whether USATF informed the IAAF of details regarding the tests – an important and contested issue with regard to domestic tests – does not arise with regard to the Hunter tests. To the extent that anybody has suggested that USATF may have concealed information from the IAAF about the Hunter tests, such speculation is therefore baseless. USATF in fact learned of the Hunter positives from the IAAF, not vice-versa.

2. USATF Should Have Informed The USOC Of Mr. Hunter's Pending Positive Tests

USATF nominated Mr. Hunter to the US Olympic team on August 15, four days after it learned from the IAAF that Mr. Hunter had tested positive. As a result of several conversations that ensued between USATF officials and Mr. Hunter and/or his agent, USATF understood that Mr. Hunter had decided not to compete pending the outcome of his case, and that he desired that the

⁹⁵ On March 8, 2001, Mr. Hunter informed USATF that he had decided not to contest the charges against him. He denied, however, knowingly taking any banned substance and asserted that he was "the victim of an otherwise legal, contaminated supplement." In addition, Mr. Hunter submitted his retirement form to USATF. USATF imposed the mandatory two-year ban on Mr. Hunter as a result of his decision not to contest the doping allegations. See Ex. 25, USATF Press Release dated March 8, 2001.

fact of his positive "A" sample be kept confidential. At about the same time, IAAF officials had conversations with Mr. Hunter, the result of which was that Mr. Hunter would withdraw from competition, and that the IAAF would not immediately publicize his positive test result. Concurrent with these events, on August 24, August 30, and September 8, 2000, the IAAF informed USATF of three additional Hunter samples that had tested positive. On August 24 and August 30, the IAAF provisionally suspended Mr. Hunter, but did not publicly announce the suspension. Neither USATF nor the IAAF informed the USOC or the IOC that Mr. Hunter had tested positive or that he had withdrawn from competition and had been provisionally suspended. USATF asserts that it had no obligation to inform the USOC that Mr. Hunter had tested positive for a banned substance and that, in fact, principles of confidentiality precluded USATF from informing the USOC that Mr. Hunter had tested positive.

As a general matter, USATF, outside the Olympics, had no obligation to inform the USOC that a USATF athlete had tested positive on an IAAF test. However, in April 2000, in response to questions from Craig Masback, USOC General Counsel Scott A. Blackmun informed USATF of the following with regard to "USOC Pre-Games Testing":

Wherever possible, the NGBs are expected to resolve positive or unusual tests before nominating an athlete to the Olympic Team. If a positive test arises after an athlete has been accepted onto the US Olympic team, then the matter will be resolved by the USOC through the Code of Conduct.⁹⁶

USATF claims that this letter did not create an obligation to inform the USOC of the Hunter positives for two reasons: first, USATF asserts these positives arose prior to the USOC's

⁹⁶ Ex. 6, Letter to C. Masback from S. Blackmun dated April 28, 2000, at 1.

nomination deadline. USATF apparently treats the midnight, September 11 deadline -- the final date by which track and field athletes already nominated to the team could qualify for the Olympics -- as the operative date. The Commission, however, believes that "the athlete was accepted onto the US Olympic team" upon the submission by USATF to the USOC of its team roster, or "Sydney Certification of Participation," on August 15. Notably, Mr. Hunter signed his USOC General Registration Form on August 15. In addition, the USOC's Code of Conduct, which Mr. Hunter signed on September 2, states that USOC has jurisdiction over all members once they have been submitted to the team by the NGB. The Code of Conduct explicitly provides: "USOC jurisdiction shall begin no earlier than August 1, 2000 and no later than August 15, 2000 unless special permission has been granted in writing by the USOC Games Preparation and Services Committee." The Code of Conduct also states that the signing athlete "accept[ed] nomination" to the team. Thus, the Commission finds that USATF had an obligation to inform the USOC of any positives that arose after August 15.

Second, USATF asserts that, in any event, it was not required to disclose IAAF tests to the USOC because Mr. Blackmun did not clearly inform USATF what to do about *IAAF* positive tests that arose after USATF had nominated an athlete to the Olympic team. The Commission believes that drawing a distinction between an IAAF test and a domestic test in these circumstances was not reasonable. It is the Commission's view that given the particular context, USATF's failure to provide some information to the USOC regarding the Hunter case was neither appropriate nor reasonable.

At a minimum, if it truly believed the letter was ambiguous, USATF should have sought clarification from the USOC. A simple phone call could have been placed to the USOC informing USOC officials that an athlete who had qualified for the team had tested positive on an IAAF test, but that the athlete intended to withdraw from the team.⁹⁷ Even if USATF believed it could not confirm that Mr. Hunter had tested positive, it should have informed the USOC at an earlier time that Mr. Hunter would not be competing in the Olympics.⁹⁸

In addition to arguing that it had no obligation to inform the USOC of the Hunter tests, USATF has claimed that it was barred from informing the USOC of the tests both by its own confidentiality rule and by other considerations. The Commission does not believe that USATF's confidentiality provision prevented USATF from informing the USOC of a pending positive test in these circumstances.⁹⁹

USATF has also stated that it was not necessary to tell the USOC that Mr. Hunter had tested positive for a banned substance because USATF officials knew that Mr. Hunter would not be competing in the Olympics. Although USATF may have believed that there was no likelihood that Mr. Hunter would compete in the Olympics, USATF still submitted Mr. Hunter as a member of its

⁹⁷ At least one top USOC official first learned of the Hunter matter from journalists. USOC officials were put in a difficult position by USATF's consistent refusal to be forthcoming with the USOC, both before the news of the Hunter positives became public and afterwards.

⁹⁸ IOC officials also told the Commission that they would have hoped that the IAAF had advised them of the Hunter situation as well.

⁹⁹ Again, USATF indicated that fear of litigation was a reason for its conduct. USATF has stated that Mr. Hunter "would have had substantial legal remedies" against USATF if it had shared information about Mr. Hunter's situation with the USOC and the USOC then took action against Mr. Hunter. For the reasons already set forth, the Commission does not agree.

Olympic team. From that point on, Mr. Hunter was under the jurisdiction of the USOC, not USATF. Even after it believed that Mr. Hunter would not compete, USATF made no efforts to ask Mr. Hunter to withdraw his name or to formally withdraw from the team. Press reports emanating from the USOC about Mr. Hunter's surgery in early September left open the possibility that he would compete.¹⁰⁰ Indeed, Mr. Hunter finally withdrew from the team only on the eve of the withdrawal deadline.

Quite simply, the Commission believes that USATF should not have placed an athlete on its Olympic team knowing that the athlete would not be competing because of a positive drug test. Even if USATF did not believe that it could have informed the USOC that Mr. Hunter had tested positive for a banned substance, USATF should have informed the USOC that Mr. Hunter would not be competing.¹⁰¹

¹⁰⁰ *Olympic Doubt for C.J. Hunter After Knee Op*, Agence France Presse, (Sept. 8, 2000) ("In a statement issued by the United States Olympic Committee, the 31 year old . . . said he was still evaluating his ability to compete in Sydney.") Mr. Hunter was also quoted as saying that he had set himself the goal of getting healed in time for the Olympics.

¹⁰¹ Had USATF informed the USOC that Mr. Hunter would not be competing in the Olympics, his replacement -- John Godina -- would have learned much earlier that he would participate in the shot put at the Olympics. Because rumors that Mr. Hunter would not be competing were circulating in the track and field world prior to the start of the Games, Mr. Godina inquired on several occasions if in fact this were true and whether Mr. Godina would be taking his place.

USATF also decided against informing its head coach for the track and field team that Mr. Hunter had tested positive for a banned substance. In 1999, USATF's Executive Committee resolved to inform a head coach of a team member's pending positive if that team member was a relay member or participating in a team scoring event. USATF suggests that, by so resolving, the Executive Committee implicitly decided that USATF would not inform
(continued...)

3. USATF Was Not Responsible For Mr. Hunter's Receipt Of Olympic Credentials

The allegations that USATF had "covered up" positive drug tests began to surface shortly after Mr. Hunter was seen wearing credentials in a restricted area of the Olympic track infield. At that time, Mr. Hunter was no longer listed as an entrant on the United States Olympic team roster, but his appearance with athlete credentials in a restricted area implied to many that he was a member of the US Olympic team. USATF had no authority to issue credentials in Australia, nor did it have any responsibility for the issuance of credentials in Australia. In fact, the USOC, not USATF, was responsible for liaisons with SOCOG regarding credentials for US Olympic personnel. Thus, USATF bears no direct responsibility for the fact that Mr. Hunter was erroneously given credentials.

On September 11, USOC staff informed the US Olympic track and field team leaders in Sydney that Mr. Hunter was withdrawing from competition. The track and field team leaders replaced Mr. Hunter in the shot put event with John Godina, who had finished fourth at the Olympic trials. Mr. Godina was already on the Olympic team because he had qualified for the discus throw. USOC staff also informed SOCOG Sport Entries staff that Mr. Hunter was being withdrawn from the team roster and that Mr. Godina would take his place.

¹⁰¹ (...continued)
the head coach in all other situations. As a matter of policy, the Commission disagrees with this approach, which forced the coach to turn to rumor, innuendo, and the IAAF rather than to USATF for important information about his team.

On September 12, Mr. Hunter arrived in Melbourne, Australia, where his wife, Marion Jones, was planning to prepare for the Games before traveling to Sydney to compete. Although the accreditation headquarters was in Sydney at the site of the Games, there was a satellite accreditation center in Melbourne. Mr. Hunter sought and was given credentials at the Melbourne Games Accreditation Center.¹⁰²

Although USOC staff informed SOCOG Sports Entries that Mr. Hunter was withdrawing from the team roster, USOC staff did not inform Games Accreditation personnel that Mr. Hunter would not be participating in the Games, and therefore that he was not entitled to accreditation. USOC staff indicated that they had thought erroneously that the deletion of Mr. Hunter from the Sports Entries list would have caused him to be deleted from the Games Accreditation list. Because Sports Entries and Games Accreditation were on two separate computer systems, however, the removal of Mr. Hunter from the Sports Entries computer did not result in the removal of authorization for Mr. Hunter to receive accreditation. It is also significant that USOC staff did not need to obtain credentials for Mr. Godina, Mr. Hunter's replacement, because he was already accredited, having qualified for the team as a discus thrower. Had USOC staff needed to inform Games Accreditation of the need to add Mr. Godina to the list, the staff would likely have informed Games Accreditation that Mr. Godina was replacing Mr. Hunter, which may have caused Games Accreditation to remove Mr. Hunter from the list of athletes to obtain credentials.

¹⁰² USOC officials maintained that Mr. Hunter knew or should have known that he was not authorized to obtain credentials. Although Mr. Hunter's counsel authorized the Commission's counsel to contact Mr. Hunter, Mr. Hunter did not respond to requests to speak with the Commission or counsel.

The Commission finds that Mr. Hunter was able to obtain credentials because some USOC officials were unfamiliar with the accreditation system and did not follow up. While this was regrettable, the Commission finds that neither USATF nor the USOC intended to enable Mr. Hunter to obtain Olympic credentials. In addition, several days elapsed between the time the USOC realized that Mr. Hunter had obtained credentials and the time the USOC retrieved the credentials. While this was too lengthy a delay, the Commission did not find that either USATF or the USOC consciously delayed the process in order to allow Mr. Hunter access to credentialed areas.

D. USATF Did Not Adequately Comply With Certain Anti-Doping Rules And Procedures

In addition to determining whether USATF improperly withheld information about doping cases, the Commission was asked to review, analyze, and report on USATF's compliance with applicable anti-doping rules and procedures for the period January 1, 1999 to the Olympic games. During this period, while USATF made efforts to administer its doping control program in compliance with applicable rules and regulations, the Commission found that USATF did not comply with certain rules and procedures in three significant areas: first, it declined to enforce the IAAF's pre-hearing suspension rule, asserting that US law prevented it from doing so. Second, USATF failed to comply with certain of its own rules concerning procedural deadlines, reporting on cases to the USOC, and issuing public notices of violations. Finally, USATF did not satisfy certain requirements connected with out-of-competition testing.

1. USATF Did Not Enforce the IAAF's Provisional Suspension Rule

The area where USATF and IAAF rules and protocols are most starkly in dispute is pre-hearing suspension. Pursuant to IAAF Rule 59.2,

[t]he athlete shall be suspended from the time the IAAF, or, as appropriate, . . . a Member, reports that there is evidence that a doping offence has taken place. Where doping control is the responsibility of the IAAF . . . , the relevant suspension shall be imposed by the IAAF. Where doping control is the responsibility of . . . a Member, the National Federation of the athlete shall impose the relevant suspension. If, in the opinion of the IAAF, a National Federation has failed properly to impose a suspension, the IAAF may itself impose that suspension.¹⁰³

Thus, IAAF rules distinguish between suspension, which is an interim measure taken to preclude a suspect athlete from competing until his or her case is adjudicated, and "ineligibility," which is a permanent sanction imposed after an adjudicated finding of a doping violation. See IAAF Rule 59.1.

Under USATF Regulation 10, however, no action may be taken to preclude an athlete from competing -- be it a preliminary suspension or a final sanction of ineligibility -- before the athlete has the opportunity to have an evidentiary hearing.¹⁰⁴ USATF asserts that it is prohibited from imposing pre-hearing suspension by the Amateur Sports Act, the USOC Constitution, and the USOC NADP.

The Commission finds that USATF's position in this regard is not unreasonable under the circumstances. While defensible legal arguments can be made that USATF has read the Amateur Sports Act too restrictively, there is also support for USATF's conclusion.

¹⁰³ A copy of all IAAF Rules pertinent to doping control may be found at Appendix C.

¹⁰⁴ See App. B, Reg. 10(D)(3)(2000) ("Every athlete has a right to a hearing before: (i) being denied the opportunity to compete; *or* (ii) being declared ineligible.") (emphasis added).

An analysis of the issue begins with the Amateur Sports Act, which states, in relevant part, that to be recognized as an NGB for an Olympic sport, an organization must, among other things, "provide[] . . . fair notice and opportunity for a hearing to any amateur athlete . . . before declaring the individual ineligible to participate." ASA § 220522(a)(8). The ASA does not, however, define the two key terms in that provision: "hearing" and "ineligible to participate."

From 1990-1997, USATF's Regulation 10 provided for a Custodial Board to conduct a preliminary review of all positive test results. As part of this preliminary review, the athlete could present an explanation, along with evidence or testimony in his or her defense. If the Custodial Board decided the case should go forward, the athlete would be suspended from that point until conclusion of the adjudication. At the time, according to then-USATF outside counsel Robert M. Hersh, USATF believed this procedure comported with the Amateur Sports Act, in that it provided the athlete with a form of hearing prior to imposing a suspension, and was also consistent with the IAAF's rule requiring prompt suspension.

However, in 1991 and again in 1994, the USOC Membership and Credentials Committee¹⁰⁵ notified USATF of that committee's view that the practice of suspending athletes prior to a full hearing violated the ASA and the USOC Constitution. Specifically, in 1991, the chair of the Committee sent a memo to all NGBs stating that "[a]utomatic suspension with a right to appeal after, does not meet the requirements of fair notice and an opportunity for a hearing before"

¹⁰⁵ The USOC Membership and Credentials Committee is responsible for determining whether NGBs are in compliance with USOC requirements, and hence qualify to be recognized as an NGB under the Amateur Sports Act.

being deprived of an opportunity to compete.¹⁰⁶ The memorandum further stated that elimination of pre-hearing suspension was "required for continued recognition as an NGB."¹⁰⁷ In 1994, the USOC Membership and Credentials Committee conducted a compliance review of USATF, and determined that USATF's Custodial Board process "does not currently provide due process to the athlete" as required by the Amateur Sports Act.¹⁰⁸ Notwithstanding these views, USATF retained its Custodial Board procedures until 1997.

Two events occurred at that time which persuaded USATF to abandon the Custodial Board mechanism. First, an arbitrator ruled in a USATF domestic doping case that the Custodial Board process, as employed in the case before him, did not afford the athlete sufficient due process to satisfy the Amateur Sports Act, and ordered USATF to rescind the athlete's suspension.¹⁰⁹ Thereafter, then-USOC CEO Dick Schultz and then-USOC General Counsel Ron Rowan asked Mr. Hersh, USATF CEO Craig Masback and others to attend a meeting where they made clear that the USOC viewed the Custodial Board process, together with pre-adjudication suspension, to be a violation of the USOC Constitution and the Amateur Sports Act. Messrs. Schultz and Rowan also told USATF that if any athlete challenged USATF's suspension procedures in court or in an arbitration, the USOC would support the athlete in any such proceeding. Faced with both these

¹⁰⁶ Ex. 26, Memorandum to NGB Presidents and Executive Directors from S. Sobel dated October 2, 1991.

¹⁰⁷ Id.

¹⁰⁸ Ex. 27, Letter to L. Ellis and O. Cassell from S. Sobel dated June 6, 1994, at 4.

¹⁰⁹ A redacted copy of the arbitrator's decision, In the Matter of Athlete F, appears as Ex. 28.

developments, the USATF Law and Legislation Committee believed that it had to modify Regulation 10 to eliminate the Custodial Board or any other form of suspension prior to full adjudication.¹¹⁰ In May 1998, USATF informed the IAAF of the change, and asked the IAAF to recognize that USATF must conform to the laws of the United States, even though it put USATF in conflict with IAAF rules.¹¹¹

No accommodation was reached between USATF and the IAAF, however, and the two organizations exchanged conflicting legal memoranda from American lawyers on the subject.¹¹² Moreover, in IAAF doping cases, when the IAAF determined that an athlete's explanation was unacceptable, pursuant to its rules it routinely wrote USATF and directed it to inform the athlete that he or she was suspended.¹¹³ USATF routinely declined to include this information in its letter to the athlete, although it typically enclosed the IAAF letter containing the same information.¹¹⁴

As a policy matter, the Commission believes that by not allowing pre-hearing suspensions under any circumstances, any incentive for an athlete to cooperate in the prompt adjudication of a doping case is reduced. The foot-dragging tactics employed by some athletes and

¹¹⁰ See Ex. 18, Letter to R. McLaren from R. Hersh dated May 14, 2001, at 1-2.

¹¹¹ See Ex. 29, Letter to I. Gyulai from R. Hersh dated May 14, 1998.

¹¹² See Exs. 30 and 31, Covington & Burling memorandum and Mayer, Brown & Platt memorandum.

¹¹³ See, e.g., Ex. 32 (sample letters redacted).

¹¹⁴ See, e.g., Ex. 33 (sample letters redacted). USATF's refusal to note the suspension in its own correspondence generated much needlessly confrontational and argumentative correspondence, primarily by USATF, which only further soured relations between the IAAF and USATF. Furthermore, this refusal leaves the athlete in a state of uncertainty.

their lawyers contribute significantly to the chronic delays in the disposition of USATF doping cases. Some athletes may have no reason to seek swift resolution, because as long as the final adjudication is put off, they can continue to compete. Moreover, the notion that athletes who have positive "A" and "B" samples may continue to compete and enjoy the benefits of successful competition is an imposition on the rights of all clean athletes who are entitled to a level playing field. Accordingly, the Commission believes that consideration should be given to a policy that would permit the suspension of athletes, at least upon the receipt of a confirming "B" sample and a preliminary review of the case, during which the athlete has the opportunity to make a submission.

Additionally, the Commission believes that there is a sound legal argument that the Amateur Sports Act's "hearing" requirement may be satisfied by giving the athlete the opportunity for some form of proceeding other than a full-blown evidentiary hearing and adjudication.¹¹⁵ In particular, the Commission notes, US courts have held that the USOC and similar sports federations are not governmental actors such that the Due Process Clause of the US Constitution would apply to their conduct.¹¹⁶ In any event, what constitutes "due process" in any given case depends on the nature of the deprivation, and whether the deprivation is temporary or permanent.¹¹⁷ In this regard, there is precedent in other areas of the law where persons suspected of drug use are suspended after

¹¹⁵ In this regard, the Commission observes that the arbitration decision in the Matter of Athlete E was based on facts unique to that case, and that while the arbitrator held that a more extensive hearing was required than Athlete F had received, he ultimately did not hold that a full-blown, trial-type adjudication was necessary to satisfy due process.

¹¹⁶ See, e.g., DeFranz v. USOC, 492 F. Supp. 1181, 1194 (D.D.C. 1980).

¹¹⁷ See, e.g., Gilbert v. Homar, 520 U.S. 924 (1997).

a preliminary proceeding.¹¹⁸ Finally, there is no evidence in the legislative history of the ASA that Congress, in requiring a "hearing" prior to a declaration of ineligibility, was even contemplating doping control proceedings. The Commission believes that Congress may want to revisit the suspension issue given the changes in amateur sports that have taken place since the ASA was enacted.

The Commission also recognizes, however, that the legal arguments on the other side are entitled to serious consideration. In particular, the legislative history of the Act supports the conclusion that when Congress said that an athlete cannot be declared "ineligible" without a hearing, it was referring to any deprivation of the right to compete, regardless of whether it was an interim suspension or an ultimate sanction.¹¹⁹

However, no court has decided the issue, and the Commission is not in the position of predicting what a US court would do if squarely faced with the question. The Commission nonetheless can conclude that USATF is not unreasonable in its belief that it is constrained by current US law -- and by the USOC -- from permitting any form of suspension prior to completion of the adjudicatory process. Moreover, because USADA will now notify the IAAF at an early stage of the process that an athlete has tested positive (see Part IV.D, below), the IAAF will be able to make its own informed decision as to whether to impose suspension internationally.

¹¹⁸ Barry v. Barchi, 443 U.S. 55 (1979).

¹¹⁹ See H.R. Rep. No. 95-1627, 1978 U.S.C.C.A.N. 7478.

2. USATF Did Not Comply With Certain Of Its Own Rules And Regulations

a. USATF Failed To Ensure That Important Deadlines Were Met

When an athlete is notified of a positive "A" sample, he or she has 28 days to request that the "B" sample be analyzed, and that analysis is to occur within 21 days of the athlete's request.¹²⁰ These deadlines conform to those prescribed by IAAF Procedural Guidelines 2.57-2.58.¹²¹ In one case, however, 55 days elapsed between a request to analyze the "B" sample and the analysis of the "B" sample.¹²² In another, 79 days elapsed between the request for the "B" analysis and its performance.¹²³ These delays can be crucial in cases involving certain prohibited substances that have a tendency to break down over time, such as caffeine or human Chorionic Gonadotrophin ("hCG"). This was illustrated by a case involving caffeine, where the late-analyzed "B" sample did not confirm the initial positive, and the case had to be closed.¹²⁴

¹²⁰ See App. B, Reg. 10(D)(2)(2000).

¹²¹ See App. D. Other sports federations impose much shorter deadlines than USATF and the IAAF for requesting "B" sample analyses. Under USADA protocols, for example, when an athlete is notified of the positive "A" sample, he or she is also notified that the "B" sample will be analyzed on a specified date within two weeks. See Ex. 17, USADA Protocol § 9(a).

¹²² See Chart of IAAF Cases, Ex. 10, IAAF #3.

¹²³ See Chart of Domestic Cases, Ex. 9, USOC #3.

¹²⁴ USATF officials said the delays in analyzing "B" samples occurred due to factors outside their control, such as the inability of a laboratory to schedule the analysis within the deadline, or the inability of athletes or their counsel to be present to witness the testing of the "B" sample within the deadlines. See Reg. 10(D)(2)(2000). USATF could have determined that the athlete in such a case waived his or her right to the "B" analysis, but did not do so, out of concern that this might form a basis to challenge the fairness of the process in any
(continued...)

There were also persistent delays in scheduling and completing USATF hearings. USATF Regulation 10(D)(4) required that an athlete must request a hearing within 28 days of notice that the "B" sample was positive. Moreover, once a hearing panel was constituted, the hearing was to take place within 60 days, but this could be extended another 30 days for good cause.¹²⁵ A review of cases adjudicated during 1999-2000 shows, however, that these requirements often were not satisfied. For example, it was not unusual for hearings to occur four to ten months after referral to a hearing panel.¹²⁶ Moreover, in some cases, USATF granted an athlete a hearing or appeal, notwithstanding the athlete's failure to appear at the hearing or to timely appeal.¹²⁷

USATF officials said the delays were occasioned by a number of factors that they could not control, including the inability to get expert witnesses from international laboratories to travel to the US within the prescribed period; obstructionist tactics and requests for postponement by athletes or their lawyers; and the fact that until 2000, USATF had to depend on volunteer lawyers and panelists to present and adjudicate cases, and that these volunteers could not always find time

¹²⁴ (...continued)
subsequent hearing.

¹²⁵ See Reg. 10(E)(2)(d)(2000). Under previous versions of this rule, the hearing was to occur at the next regularly scheduled DHB panel meeting, but no sooner than 28 days after USATF received a hearing request from the athlete. See Reg. 10(E)(2)(1999).

¹²⁶ See, e.g., IAAF #1 (four months from referral to hearing panel decision); IAAF #3 (more than 10 months between referral and hearing); USOC #19 (nine months between referral and hearing); USOC #10 (four months from referral to hearing); USOC #17 (six months from referral to hearing); USOC #13 (six months from referral to hearing).

¹²⁷ See, e.g., IAAF #1.

to handle cases within the prescribed period. When the AAA took over USATF cases, however, the rate of resolution did not significantly improve.¹²⁸

It is beyond the Commission's role to determine whether in any particular case there was an unreasonable delay and who was responsible for it. However, when these delays were coupled with USATF's policies of no provisional suspension and no disclosure of athletes' identities and other information to IAAF, the risk was substantially increased that potentially "dirty" athletes could compete in events. These delays thus could have fostered the perception of some that USATF was not serious about anti-doping, and under certain circumstances could allow USATF athletes who were found in violation to serve periods of ineligibility shorter than those mandated by the IAAF rules.

b. USATF Did Not Routinely Report To The USOC

Both the USOC National Anti-Doping Program ("NADP") and USATF's Memorandum of Agreement ("MOA") with the USOC require it to report immediately to the USOC any final action in a domestic doping case.¹²⁹ In addition, USATF was required to update the USOC as to the status of pending cases every 60 days.¹³⁰ During 1999-2000, USATF did not routinely provide such reports to the USOC.

¹²⁸ Since the Commission began its inquiry, we have observed that USATF has taken steps to better monitor and expedite the hearing process in a number of cases.

¹²⁹ See NADP § 6.16; Ex. 16, MOA § 6.16.

¹³⁰ Id.

USATF officials had no explanation for this lapse. In this regard, it should be noted that the USOC never asked for any reports or appeared to notice that it was not receiving them.¹³¹

c. USATF Did Not Announce Violations Publicly

As discussed above, for a long period, USATF failed to issue public announcements when an athlete was found to have violated doping rules. This problem was corrected in April 2000.

3. USATF's Out-Of-Competition Testing Efforts Were Insufficient

As set forth above, top USATF athletes are required to take part in both in-competition testing and out-of-competition (also referred to as no-advance-notice, or "NAN") testing. Out-of-competition testing has assumed greater importance in the fight against doping because of the increasing ease of avoiding detection of steroids and other substances in in-competition tests. USATF, in fact, was a leader in out-of-competition testing in the United States.¹³² Both the USOC and the IAAF administered out-of-competition testing programs involving USATF athletes during the period under review. The Commission examined USATF's participation in these out-of-competition testing programs to assess whether USATF complied with all applicable rules and

¹³¹ The Commission observed that in recent months, the USOC has begun inquiring, and USATF has begun reporting to the USOC on the status and outcome of cases.

¹³² In 1990, USATF initiated its own out-of-competition testing program. At the time, no other US NGB conducted a domestic out-of-competition testing program. Initially, USATF required a selected athlete to report to a testing location within 48 hours of notice for testing. USATF then adopted a no-advance-notice program. For this program, a testing squad from International Drug Testing Management ("IDTM"), a private company providing sample collection services, arrived unannounced at an athlete's home or training facility to collect a specimen for testing. In 1996, the USOC initiated its own out-of-competition testing program, and USATF transferred its NAN testing program to the USOC. The USOC program utilized USOC's own testers, not IDTM testers.

regulations, and to determine whether any out-of-competition tests were covered up or otherwise manipulated to avoid detection.¹³³

An analysis of data and documents provided by the IAAF, the USOC and USATF indicates that approximately 68% of female USATF Olympians and 75% of male USATF Olympians were tested by either the USOC or the IAAF out-of-competition between January 1999 and September 2000.

The Commission found no evidence that USATF willfully or intentionally attempted to cover-up these tests or to manipulate out-of-competition testing so as to assist elite athletes to evade testing.

The Commission did find, however, that during the period under review, USATF did not administer an effective and comprehensive out-of-competition drug testing program. As a result, USATF athletes were not subjected to domestic, no-advance-notice testing as frequently as they should have been. According to a summary provided to the Commission by the USOC, US track and field Olympic athletes were considerably less likely to be tested out-of-competition by the USOC

¹³³ The Commission reviewed correspondence and documents relating to out-of-competition testing provided by USATF, the USOC, and the IAAF. These included statistical summaries relied upon by the USOC and the IAAF to inform their views of USATF's efforts with respect to out-of-competition testing. (See Exs. 34, 35.) The Commission did not independently verify the USOC and IAAF data, nor have a statistician analyze this data, but finds the data supplied by those organizations relevant to understanding their positions. In addition, the Commission spoke with numerous witnesses with information about out-of-competition testing, including athletes, coaches, agents, officials and employees from USATF, the USOC, the IAAF, and IDTM, the company responsible for IAAF test sample collection.

than were US athletes in other sports participating in the USOC's program.¹³⁴ In addition, although USATF athletes frequently were tested by the IAAF out-of-competition testing teams, US athletes were almost twice as likely as athletes from other countries to be considered "no-shows" on IAAF tests, according to summaries provided to the Commission by the IAAF's testers, International Drug Testing Management ("IDTM").¹³⁵ The Commission believes that these relatively low success rates are in part attributable to the recurring failure of USATF to provide the IAAF and the USOC with complete and current information regarding the whereabouts of its elite athletes.

a. USATF's Olympic Athletes Were Tested Out-of-Competition By The USOC Less Frequently Than Athletes In Other NGBs

Based on the Commission's review of USATF's and USOC's out-of-competition testing records, interviews and other analysis, the Commission observed that during the period under review, a relatively small percentage of USATF's elite athletes were tested out-of-competition by the USOC. According to an analysis relied on by USOC, the percentage of USATF Olympic athletes that the USOC was able to test out-of-competition in 2000 was lower than that for any other US Olympic sport participating in the USOC out-of-competition testing program.¹³⁶

USOC's data indicates that between January 2000 and September 2000, 29.7% of USATF male Olympians were selected for domestic out-of-competition testing, and USOC was able to test only 18.8% of USATF male Olympians. According to the USOC, no other sport participating

¹³⁴ See Ex. 34.

¹³⁵ See Ex. 35.

¹³⁶ See Ex. 34. Every member of the US Olympic track and field team was, however, subjected to in-competition testing during 2000.

in the program selected less than 50% of its male Olympians, and three of the NGBs actually tested 100% of their male Olympians out-of-competition.¹³⁷ Likewise, during the same period, only 37.3% of USATF female Olympians were selected for domestic out-of-competition testing, and USOC was able to test only 15.7% of USATF female Olympians. Again, as Exhibit 34 shows, female Olympians from all other participating NGBs were significantly more likely to be selected for out-of-competition testing and tested.

Even including testing in all of 1999 as well as the first eight months of 2000, only 25% of USATF Olympic athletes were tested out-of-competition by the USOC.¹³⁸ In addition, only three USATF Olympians were tested out-of-competition by the USOC on more than one occasion between January 1999 and September 2000.

Two factors account for the relatively low percentage of elite USATF athletes being tested out-of-competition by the USOC. First, USATF employed a selection protocol that yielded only a small percentage of its elite athletes to be tested each month. Second, the USOC was able to test only a fraction of those athletes selected by USATF for testing.

Pursuant to the out-of-competition protocol that was operative in 1999-2000, USATF subjected the top 15 athletes in each of 48 specified men's or women's events to USOC out-of-competition testing. During most of the period under review, USATF employed outside auditors to randomly select ten of these 720 NAN-eligible athletes to be tested each month. In order to increase the likelihood that the top athletes would be tested out-of-competition, the USATF protocol called

¹³⁷ See id.

¹³⁸ See Ex. 36.

for the selection of five athletes who were ranked one through five in their events, three athletes who were ranked six through ten, and two athletes who were ranked eleven through fifteen. Given the large number of eligible athletes involved and the relatively low number of athletes selected each month, the odds that any individual, Olympic-level athlete would be selected in a given month were very small.

The Commission observes that the out-of-competition testing program would have been more effective if there had been a greater likelihood that elite athletes would be selected for testing. USATF could have increased the odds of being selected for testing either by increasing the number of athletes selected for testing in a given month or by decreasing the number of athletes in the out-of-competition testing pool. In fact, USATF did increase the number of athletes selected to be tested out-of-competition in the five months leading up to the Sydney Games.¹³⁹ In addition, in response to suggestions from USADA, on January 21, 2001, USATF decreased the number of athletes to be included in the out-of-competition testing pool in order to focus the pool on those elite athletes who were likely to qualify for US team selection and compete internationally.

The Commission also finds of concern the fact that only a small percentage of the athletes who were selected to be tested out-of-competition in a given month actually were tested. According to one audit performed for USATF, for example, of the 60 USATF athletes selected for unannounced testing between September 30, 1998 and March 31, 1999, only eleven were actually tested during that period. The audit also indicated that an additional 110 USATF athletes from prior

¹³⁹ Nevertheless, although USATF increased the number of athletes selected for testing each month, the number of athletes actually tested did not appreciably increase.

periods had been selected for testing but had not in fact been tested. The USOC analysis of Olympic athletes selected for out-of-competition testing and in fact tested during the year 2000 further corroborates the conclusion that a high percentage of USATF athletes who were supposed to be tested out-of-competition never were tested.

USOC employees attributed this low yield to a lack of cooperation on the part of USATF, which manifested itself in USATF's chronic tardiness in providing the list of athletes to be tested,¹⁴⁰ and by USATF's regularly providing inaccurate or incomplete information regarding the whereabouts of the selected athletes. As discussed below, the Commission found that these concerns were valid. USATF, for its part, attributed the lack of success in testing those athletes selected for out-of-competition testing to a lack of effort or competence on the part of the USOC's testing teams. USATF indicated that it was able to test a larger percentage of the athletes selected for testing when it used IDTM testers. Although the Commission was not provided any statistical evidence to corroborate this claim, correspondence between USATF and the USOC shows that USATF raised with the USOC the fact that USOC testers did not succeed in testing a sufficiently high percentage of the athletes selected for testing.¹⁴¹

¹⁴⁰ For example, according to a February 15, 1999 letter from a USOC official to a USATF official, USATF did not provide the USOC with the list of USATF athletes to be tested in November 1998 until December 15, 1998, and did not provide the USOC with the names of any other athletes to be tested until February 15, 1999.

¹⁴¹ For example, on November 18, 1998, USATF wrote the USOC about its concern "that USOC is not fulfilling its responsibilities under the MOA, with respect to the NAN program. USATF records indicate that less than a quarter of the athletes selected for NAN testing have actually been tested. When USATF administered its own anti-doping program . . . we tested approximately 80% of those athletes selected for testing." In that same letter, USATF further
(continued...)

The USOC also stated that its efforts to test USATF athletes were complicated by the fact that USATF, unlike every other NGB participating in the USOC's out-of-competition testing program, maintained control over the selection process for the athletes to be tested each month. Other NGBs allowed the USOC to randomly select the athletes to be tested. USATF, on the other hand, contracted with an independent accounting firm to randomly select the ten athletes to be tested each month. USATF then provided the names of these athletes to the USOC. The Commission found no evidence that USATF influenced the selection of these athletes, or that USATF ever informed an athlete that he or she had been selected to be tested. Nevertheless, the USOC was forced to rely upon USATF to obtain the names of athletes to be tested, and USATF often failed to provide the information to the USOC on a timely basis. In addition, the fact that USATF officials knew in advance which elite athletes had been selected for testing each month increased a risk for creating the appearance of impropriety.¹⁴²

b. USATF Athletes Selected For Out-Of-Competition Testing By The IAAF Were More Likely Than Other Athletes To Be Considered "No-Shows"

¹⁴¹ (...continued)
asserted that the USOC's requirement that athletes' whereabouts information be submitted on a specific form created an additional burden for USATF that was not required by its Memorandum of Agreement with USOC.

¹⁴² USATF and USOC officials indicated that they believed that USATF's role in the selection process was simply a historical vestige. Unlike many of the NGBs participating in the USOC's NAN testing program, USATF previously had conducted its own out-of-competition testing. When the USOC took over the NAN testing program, USATF officials indicated, USATF simply continued to manage the process whereby athletes were selected for testing, because it already had a protocol in place to do so.

The IAAF's out-of-competition testing program differs in a few respects from the USOC's program. Approximately 1000 athletes world-wide, representing the athletes ranked in the top 20 in their events, are eligible to be tested out-of-competition by the IAAF. Unlike the USOC's program, the selection from the overall pool is not random; the IAAF's testers attempt to test each athlete in the pool twice a year because an athlete may not receive an IAAF award or prize money unless that athlete was tested out-of-competition twice in the twelve months prior to the event.

Coaches and athletes from the United States told the Commission that it was their impression that the IAAF tested US athletes more often than athletes from other countries. At the same time, international officials complained that US athletes were more difficult to find and were tested less often than athletes from other countries. In fact, it appears that the IAAF tested US athletes in a proportion consistent with their representation in the elite ranks of track and field. According to data relied upon by the IAAF, of the elite 1000 athletes eligible for out-of-competition IAAF testing, 14% are US athletes.¹⁴³ From 1998 to 2000, 18.4% of the athletes approached for testing by the IAAF were US athletes, and 16.2% of the athletes actually tested by the IAAF were US athletes.¹⁴⁴ US athletes, moreover, comprise a similar percentage of Olympic medalists. In the 1996 Olympics, for example, Americans won 14% of all track and field medals awarded. In the 2000 Olympics, Americans won 13% of all track and field medals. Thus, the Commission finds that

¹⁴³ See Ex. 35.

¹⁴⁴ See id.

the IAAF subjected US track and field athletes to out-of-competition testing at a rate relatively proportional to their representation in the elite ranks of the sport.

An analysis of data provided by the IAAF shows that from January 1999 to September 2000, the IAAF tested out-of-competition approximately 62% of the athletes who became members of the US women's Sydney Olympics squad and 63% of the men's squad. In addition, the vast majority of US athletes tested by the IAAF during this period were tested multiple times. In fact, seventeen US Olympians were tested out-of-competition more than five times during the time period.

The IAAF data shows, however, that the IAAF had more difficulty testing US athletes selected for out-of-competition testing than the athletes of most other member federations. Between January 1998 and September 2000, approximately 25.4% of all attempts by the IAAF to test US athletes out-of-competition were unsuccessful.¹⁴⁵ During the same period, only some 13% of all attempts to test non-US athletes out-of-competition were unsuccessful.¹⁴⁶ Thus, the IAAF asserts that its testing teams were almost twice as likely to be unable to locate and test an American athlete selected for NAN-testing compared to an elite athlete from another country. The IAAF data also reveals, however, that several federations had worse records than USATF. For example, during

¹⁴⁵ See Ex. 36.

¹⁴⁶ Id. According to data provided by IDTM, the IAAF attempted tests on US athletes on 1,165 occasions during the time period, and reported that the subject was unavailable for testing 296 times. The IAAF attempted 5,166 tests on non-US athletes during the time period and reported that the subject was unavailable for testing 682 times.

the same time period, approximately 30% of the attempts to test athletes from Morocco were unsuccessful and 28% of the attempts to test athletes from the Czech Republic were unsuccessful.

c. USATF Did Not Provide Complete And Accurate Whereabouts Information, Which Impeded The Out-Of-Competition Testing Programs Of Both USOC And The IAAF

Both the USOC and the IAAF relied on USATF to provide them with "whereabouts" information for athletes, so that testers for either organization could locate the athletes selected for out-of-competition testing.¹⁴⁷ The "whereabouts" information required by the USOC and the IAAF included one or more addresses where an athlete could be found, and his or her workout schedule, training locations, contact information and travel itinerary.

The Commission determined that USATF did not fully comply with IAAF and USOC requests for whereabouts information. USATF frequently provided the USOC or the IAAF no more than a single address from a computer printout. Evidence indicates that the addresses provided often were out-of-date, or in some cases, were not even a residence. Correspondence from USOC and IAAF officials frequently indicated their concern about receiving illegible, incomplete and inaccurate information regarding the whereabouts of US track and field athletes. This correspondence shows that during the period under review, USATF did not adequately address or respond to the concerns expressed by the USOC and the IAAF regarding whereabouts information, thereby hindering their ability to carry out their out-of-competition testing programs.¹⁴⁸ The Commission determined that

¹⁴⁷ See NADP §§ 2.3(d), 8.8; IAAF Rule 57.1.

¹⁴⁸ Because both the USOC and the IAAF were provided insufficient information to locate an
(continued...)

other NGBs, notably USA Swimming and other IAAF member federations, provided much more extensive information to the USOC or the IAAF and had correspondingly higher success rates for out-of-competition testing.¹⁴⁹

USATF acknowledged that it had difficulty keeping track of its elite athletes and obtaining sufficient whereabouts information from them. USATF emphasized, however, that track and field athletes are highly transient individuals, who change coaches and addresses often. Thus, according to USATF, monitoring the whereabouts of elite track and field athletes is necessarily a more difficult task than keeping track of swimmers or team athletes, who train as a group. In addition, USATF indicated that its athletes simply did not cooperate and did not provide to USATF the requested information. Finally, USATF indicated that personnel problems at USATF accounted for some of the difficulties in providing whereabouts information to the USOC and the IAAF.

Although the Commission agrees that keeping track of the whereabouts of 720 athletes is a difficult task, USATF could have taken steps that would have improved its performance

¹⁴⁸ (...continued)
athlete, the organizations often had to contact USATF to seek more recent or additional whereabouts information.

¹⁴⁹ IAAF Rule 57 requires all member federations to participate in both the IAAF's out-of-competition testing program and a domestic out-of-competition testing program. USATF officials repeatedly noted, however, that the majority of IAAF members do not conduct or participate in a domestic out-of-competition testing program. IAAF officials conceded that many smaller nations' federations do not conduct or participate in NAN testing programs, because they lack the resources or because they do not have a sufficient number of world-class athletes training in the country to make such a program worthwhile. IAAF officials acknowledged that it has not sanctioned any of these members for failure to comply with Rule 57, but also asserted that all of its major federations maintain or participate in domestic out-of-competition testing programs.

in this area. First, unlike other NGBs, USATF did not penalize members for failing to provide sufficient whereabouts information. USATF had the authority to require better cooperation from its athletes but did not exercise that authority. Section 6.1 of USATF's no-advance-notice testing protocol states that "failure to provide accurate information duly requested by the USATF Legal Department shall be considered a doping offense." Although USATF acknowledged that many athletes did fail to provide it with accurate whereabouts information, it also acknowledged that it never charged any of its athletes with a doping offense for failing to do so.¹⁵⁰

Second, the USOC and the IAAF recommended certain steps that USATF could take that might improve the quality of the whereabouts information, but USATF did not follow up on these suggestions. The USOC suggested that USATF use a form for whereabouts information that had met with success when used by other NGBs, but USATF declined to do so. Similarly, the IAAF suggested that USATF athletes could provide their own whereabouts information directly to the IAAF. It does not appear that USATF asked its athletes to do so. Finally, both IAAF officials and USOC employees complained that many USATF athletes did not cooperate with testing teams. USATF responded to these complaints by itself complaining to both the IAAF and the USOC that USATF athletes felt that they were being harassed by testers.

The Commission hopes that the advent of USADA will eliminate many of these problems. USADA will control the selection process for all athletes to be tested out-of-competition,

¹⁵⁰ The IAAF similarly does not level sanctions for failing to submit current whereabouts information. The IAAF does, however, withhold prize money and awards from an athlete who has not been tested out-of-competition twice in the twelve months prior to the event in which the athlete qualified for the prize money or award.

including USATF athletes. In addition, although USATF will provide USADA on a quarterly basis the list of athletes subject to out-of-competition testing, USADA will be responsible for maintaining whereabouts information regarding those athletes. Moreover, although USADA had initial difficulties obtaining whereabouts information from track and field athletes, USATF CEO Craig Masback took meaningful steps to encourage athletes to cooperate with USADA.¹⁵¹ The Commission is of the view that this is a positive development and an indication of future better cooperation for domestic testing programs. The Commission hopes similar steps can be taken with respect to international testing.

IV. OTHER OBSERVATIONS

A. Problems At The Indianapolis Laboratory Contributed To IAAF Concerns Over USATF And Resulted In Athlete Exonerations

During the period under review, USATF's agreement with the USOC required the USOC to send all samples from USATF tests to the IOC-accredited laboratory at the Indiana University School of Medicine, located in Indianapolis, Indiana ("Indianapolis lab"). The lab performed an analysis on all "A" samples that it received. If the sample tested positive for a banned substance, the lab was required to provide a report of the analysis to the IOC, the USOC, and the

¹⁵¹ Specifically, as of a January 2001 deadline, USADA had received no information from any of the 500 USATF athletes to be included in USADA's out-of-competition testing pool. Upon learning of this, Mr. Masback informed USATF athletes that USADA would publish the names of those who had not provided their whereabouts information. Thereafter, USADA received all of the requested information.

IAAF.¹⁵² When the "A" sample tested negative, the lab was to destroy the "B" sample of the specimen after two weeks. If the "A" sample was positive, the lab was to retain the "B" sample for at least one year, in the event that an athlete requested further analysis.¹⁵³

The Commission finds that the Indianapolis lab did not comply with the requirement that it simultaneously report positive tests to the IAAF and the USOC. This failure contributed significantly to IAAF mistrust of USATF. The Commission also understands that significant quality-control problems at the lab forced USATF to close certain doping cases.

The Indianapolis laboratory itself is now closed. In 2000, however, before it closed, employees at the lab failed to send to the IAAF reports of certain positive samples from USATF athletes. Dr. Larry Bowers, then director of the Indianapolis lab, learned in June 2000 that the lab had not sent all of the required reports to the IAAF.¹⁵⁴ On August 31, 2000, Dr. Bowers sent to the IAAF reports of positive tests which were USATF positive samples processed by the lab over the prior fifteen months.¹⁵⁵

¹⁵² Chapter 5, Article 4, of the Olympic Movement Anti-Doping Code requires an IOC-accredited laboratory to provide "[r]eports of samples having been found to contain prohibited substances and/or excessive amounts of endogenous substances" simultaneously to the organization that initiated the test, the IOC Medical Commission, and the appropriate international federation.

¹⁵³ USOC contract with Indianapolis Lab, § 5.

¹⁵⁴ Dr. Bowers left the lab on August 31, 2000, to become a senior managing director of USADA.

¹⁵⁵ Dr. Bowers explained that, although it is likely that the lab had sent to the IAAF some of those reports, he was unable to verify whether certain reports had ever been sent. Thus, he decided to provide copies of all positive reports from the prior fifteen months to the IAAF. (continued...)

According to Dr. Bowers, lab clerical employees failed to provide the required reports to the IAAF because the lab suffered from a high degree of employee turnover and was not adequately funded. The Commission is unaware of any evidence that the Indianapolis lab intentionally withheld reports of positive "A" samples from the IAAF.¹⁵⁶

In addition, the Commission was informed that the Indianapolis lab experienced a relatively high level of employee errors that prevented USATF from proceeding with cases in which an athlete had an initial positive sample. Specifically, the Indianapolis lab inadvertently disposed of a "B" sample in a case where the "A" sample tested positive.¹⁵⁷ In another case, the lab inadvertently destroyed both the "A" and "B" samples.¹⁵⁸ Therefore, USATF was unable to proceed against the athletes in these cases. USATF also decided against proceeding with another case after Dr. Bowers informed USATF, on the eve of a hearing, that there had been a break in the chain of custody for the "A" sample.¹⁵⁹ These cases indicate that the Indianapolis lab may not have been operating at the standards required for an IOC-accredited lab. While the Commission did not

¹⁵⁵ (...continued)

The IAAF asserted that it was unaware of seventeen of the samples reported by Dr. Bowers at this time.

¹⁵⁶ According to Dr. Bowers, clerical employees at the lab had sent some of the positive sample results to the wrong international federation and had failed to send some of the positive sample results to any federation.

¹⁵⁷ See Chart of Domestic Cases, Ex. 9, USOC #22.

¹⁵⁸ See id., USOC #6.

¹⁵⁹ See id., USOC #13.

undertake any inquiry into the operation of the laboratory, the Commission is extremely concerned and disturbed by the unusually high error rate experienced at the lab.

On another three occasions, an athlete was exonerated because the "B" sample tested below the threshold considered positive for the particular substance involved despite the fact that the "A" sample had tested positive for the substance.¹⁶⁰ While it is rare for a "B" sample not to confirm an "A" sample, factors other than lab error were at work with respect to these three cases. On each occasion, analysis of the "B" sample was performed more than 60 days after the sample was collected. The Commission was informed that for at least two of these three tests, it is likely that this delay accounted for the failure of the "B" sample to match the "A" sample, because of the tendency of the substance involved to break down over time. See Part III.D.2.a, above.

Although the Commission finds that the lab's failure to report results to the IAAF substantially contributed to difficulties between USATF and the IAAF, and that the number of lab errors necessitating the dismissal of cases was unusually high, USATF bears no direct responsibility for these problems. In fact, the IOC Medical Commission had the responsibility for overseeing the IOC-accredited labs, such as the Indianapolis lab. USATF had no oversight authorization, and there is no evidence that USATF was aware that the lab had not sent to the IAAF information about all initial positive results. On the other hand, if USATF had provided information to the IAAF about pending positives, as the Commission believes it should have done, then the IAAF would have realized much earlier that it had not received all of the results from the Indianapolis lab.

¹⁶⁰ See id., USOC #3, #5, #14.

In any event, the Indianapolis laboratory ceased operations on November 17, 2000.¹⁶¹

B. USATF Did Not Adequately Manage Testosterone Cases

The Commission finds that several doping cases involving athletes with elevated T/E ratios were delayed for well over a year because of a dispute between the USOC and USATF regarding which organization was responsible for proceeding with an investigation to determine whether a sample evidencing an elevated testosterone to epitestosterone ("T/E") ratio should be deemed positive. USATF also did not pursue testosterone cases involving female athletes.

Current IAAF rules provide that "a sample will be deemed to be positive for testosterone where either the ratio in urine of testosterone to epitestosterone, or the concentration of testosterone in urine, so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production."¹⁶² Because the normal T/E ratio for humans is one to one, as a general matter the IAAF treats a T/E ratio of greater than six parts testosterone to one part epitestosterone as a factor indicating that the testosterone exceeds the normal range found in humans and is thereby consistent with doping.¹⁶³ IAAF procedures also state, however, that "[a] sample will not be regarded as positive for . . . testosterone where an athlete proves by clear and convincing evidence that the abnormal ratio or concentration is attributable to a pathological or physiological condition." In attempting to determine whether an elevated T/E ratio sample is

¹⁶¹ Currently the only IOC-accredited laboratory in the United States is a lab located at the University of California at Los Angeles Medical School, which is run by Dr. Don Catlin.

¹⁶² IAAF Procedural Guidelines for Doping Control, Schedule 1(a)(I). See Ex. 8 at Schedule 2.

¹⁶³ The Olympic Movement Anti-Doping Code provides that any T/E ratio greater than 6:1 is suspicious, requiring a longitudinal analysis. See App. F at 35.

indicative of ingestion of testosterone, and not simply the natural, albeit abnormal, ratio for a particular athlete, the IAAF has historically analyzed a series of samples from the same athlete taken over a period of time. Such an analysis is commonly referred to as a longitudinal study.

Samples from five USATF athletes tested during the period under review showed elevated T/E ratios; there were at least an additional five cases involving an elevated T/E ratio that began prior to the time period under review and were either resolved during the time period or remain pending. Several of these cases were delayed for one year or more because USATF and the USOC did not undertake the longitudinal studies to investigate the elevated ratios. Each organization asserted that the other was responsible for undertaking the investigation. USATF asserted to the USOC that it had no responsibility to undertake the longitudinal study and that, in any event, "no athlete should be deemed to have tested positive for an elevated T/E ratio, until such time that a state of the art scientific study has been performed and a methodology for making a definitive determination has been approved by the scientific community."¹⁶⁴ In the meantime, although the USOC clearly informed USATF that it believed that USATF was responsible to perform such analyses, USATF continued to inform both athletes and the IAAF that the USOC would be conducting T/E investigations.

It is beyond the scope of this Report to determine which organization had responsibility for performing longitudinal studies. The Commission believes, however, that both USATF and the USOC would have better served anti-doping efforts if they had proceeded with T/E

¹⁶⁴ Ex. 37, Letter to D. Schultz from C. Masback dated April 7, 1999, at 1.

cases during the period under review. By failing to resolve this issue for well over a year, both organizations undercut the effectiveness of the testosterone prohibition. In addition, it was wrong for USATF to inform the IAAF that the USOC was proceeding with its T/E analyses -- knowing that the USOC was not doing so.

The Commission also finds that USATF did not accept the IAAF's rules regarding T/E cases. Samples from two female USATF athletes, Mary Decker Slaney and Sandra Farmer Patrick, had T/E ratios in excess of 6:1 from tests taken in 1996. A USATF Doping Hearing Board exonerated Ms. Slaney, holding that the IAAF's T/E procedures were too "vague and inconsistent" to be applied. The IAAF, dissatisfied with the decision, referred it to arbitration. Both Ms. Slaney and USATF withdrew from the arbitration. Ms. Slaney then filed a lawsuit against both the IAAF and the USOC, and USATF issued a press release criticizing the IAAF's procedures and expressing support for Ms. Slaney's lawsuit. On April 25, 1999, the IAAF arbitration panel determined that Ms. Slaney had committed a doping offense.¹⁶⁵

In the meantime, another USATF Doping Hearing Board held that Ms. Patrick had committed a doping violation, holding that she had tested positive for testosterone. USATF, however, advised the IAAF that it had vacated that decision. USATF officials would not discuss the Patrick case with the Commission, including the reason for the vacatur of the Doping Hearing

¹⁶⁵ See *Slaney v. IAAF*, 244 F.3d 580, 587, 589 (7th Cir. 2001).

Board decision. They also declined to provide the Commission with a copy of the Doping Hearing Board decision.¹⁶⁶

Although USATF officials believe that the IAAF acted wrongfully in arbitrating the Slaney case and also believe that the IAAF's T/E rules have no scientific validity with regard to female athletes, USATF could have advocated this position through authorized channels. For example, the IAAF has procedures by which members may seek to change existing rules, guidelines and protocols. USATF could have attempted to use these processes to modify the IAAF's T/E procedure, rather than disregarding existing standards with which it disagreed.

C. In Managing The Conflicting Responsibilities That It Was Required To Discharge In Doping Control, USATF Gave Priority To The Rights Of Individual Athletes Over Other Interests

As with all sports national governing bodies, USATF had to manage the inherent conflict between its role as an enforcer of doping controls and its role as a defender and advocate of individual athletes' rights. In any given doping case, USATF might be cast at different times in the role of the prosecution, the defense and the judge.¹⁶⁷ Based on the Commission's review of USA TF's handling of numerous cases, the Commission observed that, in performing this difficult balancing

¹⁶⁶ Accordingly, the Commission's knowledge of the Patrick case is based on testimony from other witnesses and review of IAAF files. More recently, in adjudicating another T/E case dating to 1996, USATF was ordered by an AAA panel to provide the athlete's lawyer with the Patrick decision. USATF refused to comply with the order.

¹⁶⁷ The conflicts inherent in such a system, indeed, prompted the externalization of doping controls to USADA.

act, USATF often emphasized the rights of the individual athlete over other interests and responsibilities -- including the interests of all athletes who deserve a level playing field.

In the Commission's view, this especially was true in connection with USATF's processing of IAAF cases, where it often seemed that USATF viewed the IAAF as the opposition, rather than as a party whose interests USATF also was required to respect in administering doping controls. Thus, USATF staff advised the Commission that it was USATF policy to assist individual athletes and their lawyers in drafting letters of explanation to the IAAF. The Commission's review of these marked up drafts showed that this assistance consisted of more than simply explaining USATF or IAAF procedures to the athlete or his lawyer. In some cases USATF suggested factual defenses, even when USATF personnel did not know if there was a factual basis for the defense. This policy of assisting athletes with their substantive defenses raised a question to the Commission of how USATF could then change roles and present a doping case to adjudicators, when it had played such an active role on behalf of one of the parties.

This was illustrated in a case that the IAAF was investigating to determine if a US athlete had improperly evaded out-of-competition testing.¹⁶⁸ In that case, the IAAF testers provided a detailed chronology intended to substantiate their view that the athlete had intentionally evaded them when the athlete was approached for testing while training in the US. The IAAF asked the

¹⁶⁸ Under IAAF rules, an athlete "who fails or refuses to submit to doping control after having been requested to do so by the responsible official will have committed a doping offence and will be subject to sanctions." IAAF Rule 56.1. Under USATF rules, the unexcused failure to submit to out-of-competition testing when approached by doping control officers is the equivalent of providing a positive "A" sample. Regulation 10(E)(2)(j).

athlete to provide an explanation. Through a lawyer, the athlete submitted a chronology suggesting that the athlete and the testers had simply missed each other due to crossed signals. The IAAF asked USATF to investigate to determine the facts. USATF declined to do so, asserting that it was not equipped to conduct an investigation nor authorized or required to do so by any rule or regulation. Unable to determine which version of events was accurate, the IAAF closed the case.

The IAAF was unaware, however, that USATF personnel had assisted the athlete's lawyer in drafting the explanation submitted to the IAAF. This assistance included suggesting factual defenses, notwithstanding that USATF had not conducted any independent investigation of the facts. USATF officials believed it was appropriate to assist the athlete in this manner because until the IAAF rejects a letter of explanation, there is, in effect, no case against an athlete. They also assumed that an athlete would not use a suggested defense for which there was no factual support.

USATF also entered into several settlement agreements to resolve domestic doping cases that included confidentiality provisions that precluded it from reporting the bases for dismissing the cases to the IAAF. As a result, the descriptions given to the IAAF concerning how the cases were concluded were incomplete or inaccurate. Specifically, in one case, the IAAF was told that the hearing board finding against an athlete had been vacated, but pursuant to an agreement with the athlete, the IAAF was not told the reason why.¹⁶⁹ In the other, the settlement agreement expressly prohibited disclosure to the IAAF of any information other than that the case had been

¹⁶⁹ In this case, the Commission likewise was not allowed to learn the reason why USATF counsel had determined that the hearing panel's finding of a violation should be vacated.

dismissed by the AAA. In fact, the dismissal was pursuant to agreement of the parties because of laboratory error.

USATF asserts that in promising not to disclose information to the IAAF in these cases, it is promising no more than compliance with its own confidentiality regulation. The Commission's view of whether that regulation can operate to limit disclosure to the IAAF is discussed at length above. Moreover, the Commission is unaware of any rule or regulation that authorizes USATF to dispose of cases through settlement without regard to its reporting obligations to the IAAF and the USOC. These settlement agreements with confidentiality provisions adversely affect the accountability necessary for a successful anti-doping regime.

D. USADA And Its Impact On These Issues

On October 2, 2000, the United States Anti-Doping Agency ("USADA") took over doping control functions previously performed by the USOC and the NGBs for US Olympic sports, including USATF. Since then, USADA has been responsible for collecting samples and managing the adjudication process for US athletes who tested positive. The Commission hopes that the creation of USADA will defuse many of the disputes between USATF and the IAAF that arose in 1999-2000. By externalizing doping controls in an independent agency, the conflicting responsibilities inherent in the old system will be significantly reduced. Moreover, building on the experience of a number of NGBs, USADA has wiped the procedural slate clean and built a results management protocol which will alert international federations much earlier in the doping control process and which will, if the IAAF desires, allow the IAAF actually to participate in the adjudicatory process.

Specifically, the protocols adopted by USADA¹⁷⁰ provide that after the "B" sample has been analyzed, a Review Board, consisting of independent technical, scientific, medical and legal experts, will review the case to determine if it should go forward. USADA officials liken this to a "probable cause" hearing. The athlete is given the opportunity to submit written materials to the USADA Review Board. If the USADA Review Board decides to move forward with the case, the USOC, the NGB and the international federation will be notified -- regardless of whether the case is a domestic case or one initiated by the international federation. Likewise, if the Review Board determines that the case should not proceed, the international federation will be notified of that decision along with the athlete's identity and the reasons why the case did not go forward. Therefore, the IAAF will be able to review the decision under its rules regardless of whether the test is domestic or international.¹⁷¹

Additionally, if the a case goes forward to a hearing against a track and field athlete, USADA will invite the IAAF to participate as an observer or a participant at the hearings. Under USADA's protocols, the affected athlete also can choose to expedite the adjudication process by bypassing the initial hearing and going directly to a single, final hearing before the Court of Arbitration for Sport ("CAS").¹⁷² Additionally, the internal deadlines and other features of USADA's protocols, if adhered to, should substantially shorten the time it takes to dispose of a case.

¹⁷⁰ Ex. 17.

¹⁷¹ See, e.g., Ex. 38.

¹⁷² See Ex. 17, Protocol 9(b)(iv).

The IAAF has advised the Commission that in its view, the implementation of USADA's protocols does not relieve USATF of any independent obligation under IAAF rules to notify the IAAF immediately of any positive "A" samples in domestic doping cases. In this regard, the IAAF asserts that USATF has an obligation under IAAF Rule 61.1 to immediately report positive "A" samples along with the athlete's identity, and points out that under USADA's protocols, it would not learn of domestic doping cases until after the "B" sample has been analyzed and the Review Board has acted. USATF at the same time takes the position that its confidentiality policy under Regulation 10 is unaffected by USADA's protocols.¹⁷³ Accordingly, the IAAF does not believe the dispute over reporting is fully resolved by the advent of USADA. Moreover, the conflict over provisional suspension will remain a live issue under USADA.

Nonetheless, the flow of information to the IAAF should be significantly improved because, unlike under the USATF system that was in place in 1999-2000, the IAAF will be brought into the process at an earlier stage and will learn about even those domestic cases where the athlete is exonerated or the case is dismissed, and the reasons why the case did not go forward to violation. The Commission is hopeful that these improvements will go a long way toward resolving the controversies that arose during the Sydney Games, and that are otherwise discussed in this Report.

V. RECOMMENDATIONS

¹⁷³ This is now Regulation 10(K) (2001).

In its September 29, 2000 charge letter (Ex. 1), the Commission was asked to “recommend to USA Track & Field mechanisms for balancing the competing objectives of conducting an effective anti-doping program and administering a disciplinary process that is fair and just to athletes.” Because USATF conducts its responsibilities with respect to doping within a hierarchy of organizations that have jurisdiction over aspects of doping control, the Commission considers it necessary and appropriate to extend its recommendations to those other organizations. The Commission recommends as follows:

A. General

The Commission urges USATF to administer its remaining doping control responsibilities in a manner that accords weight not only to the important rights of the individual athlete who is the subject of a doping investigation, but also to the overall goals of the anti-doping movement and the ethical values implicit in the concept of Fair Play, as discussed in the Olympic Movement Anti-Doping Code. To this end:

1. USATF should set an organizational goal of becoming a true leader in anti-doping in the United States, by totally supporting USADA and by imparting to its member athletes a no-nonsense attitude toward doping. This can be accomplished by educating its members with respect to the ethics of athletics, and by involving elite member athletes to carry the message to the USATF membership. USATF and these athlete leaders should become, in effect, ambassadors on behalf of the new USADA program.

2. USATF should find a way to work in harmony with the IAAF toward their shared goal of combating doping. USATF and the IAAF should make extra efforts to restore trust and respect between them in the handling of day-to-day issues that arise in connection with doping matters. In this regard, USATF should eliminate the unnecessarily contentious tone and hyper-technical argumentation that is found in much of its correspondence with the IAAF.
3. USATF, in order to discharge its overall responsibilities with regard to doping control, should to the fullest extent possible act as an impartial administrator of doping controls, and not as an advocate for individual athletes involved in the doping control process.
4. USATF should ensure that individual athletes have the opportunity to exercise their rights and to be heard in their defense in a doping case, but should also make sure that athletes understand that when they unduly delay proceedings, disregard adjudicatory deadlines or fail to show up for hearings, they waive those rights.

B. Confidentiality

1. To the extent that USATF's confidentiality policy remains an issue after the implementation of USADA, it should be modified to permit individuals and organizations such as the IAAF and the USOC to be made fully aware of doping matters. USATF should not invoke any principle of confidentiality to preclude sharing information with organizations such as the IAAF and the

USOC that have a legitimate need to obtain the information in order to carry out their doping control responsibilities.

2. USATF should revise its confidentiality policy and regulation to conform with and recognize its obligations to comply with IAAF rules. While the due process rights of athletes are entitled to the utmost respect, the Commission notes that confidentiality has not been viewed as a requirement of due process in other contexts. Accordingly, USATF should revise its confidentiality policy that currently is so strict that it effectively defeats some of the goals of doping control. The Commission believes that this can be done consistent with the Amateur Sports Act; but if it is determined that such modifications cannot be made under the ASA, the Commission would urge Congress to revise the Act.
3. In particular, as currently written, USATF's confidentiality regulation permits individual athletes to prevent the release of information about certain doping cases to the IAAF. This provision should be eliminated, for two reasons. First, USATF athletes who compete internationally agree to abide by IAAF Rules, including doping controls, and are on notice that the IAAF may impose international sanctions against athletes pursuant to those rules. Individual US athletes should not be empowered to bar the IAAF from learning information about their cases and thereby preclude the IAAF from enforcing international rules against US athletes that are applicable to all non-

US athletes. Second, inasmuch as USADA intends to provide information about pending cases or exonerated athletes to the IAAF, the continued existence of this provision will only confuse athletes and create unreasonable expectations about their rights to control the flow of information to the IAAF.

4. On a related point, USATF (and USADA) should refrain from entering into settlement agreements in doping cases that would obligate them to withhold information from the IAAF or the USOC that they are otherwise obligated to report to these organizations. The Commission is concerned that such confidentiality agreements have the potential to be a mechanism to avoid USATF's reporting duties, and can adversely affect accountability in doping control.

C. Suspension

1. For reasons stated in the Report, the Commission believes that as a general policy matter, it is in the interest of US sport to permit the provisional suspension of athletes at least upon the following conditions: prompt receipt of a confirming "B" sample; the opportunity for the athlete to submit a written explanation; and a review of that explanation and of the sample collection and laboratory processes by a group of legal, medical and scientific experts. The Commission recognizes, however, that there is a question about whether such a provisional suspension would be acceptable under the Amateur Sports Act. Moreover, pre-hearing suspension is not currently

permitted under USOC rules. The Commission therefore would urge Congress to clarify the Act in this regard, and would urge the USOC to reconsider its policy as well.

2. Until US law is clarified and USOC policy is modified, USATF should not be required to enforce the IAAF's provisional suspension rule in the US prior to giving the athlete an opportunity for a hearing, and the IAAF should not attempt to enforce its contamination rule in domestic US competition in such cases.
3. At the same time, USATF should, in accordance with the IAAF's rules and procedures, promptly report to the IAAF sufficient information about positive samples in domestic doping cases (now conducted by USADA), including the identity of the athlete. This will enable the IAAF to monitor USADA's handling of cases and make a determination at the appropriate point whether to impose suspension internationally.

D. Out-of-Competition Testing

1. USATF should continue to work with USADA to implement an out-of-competition testing protocol that increases the numbers of elite track and field athletes that are tested out-of-competition.
2. The organizations responsible for out-of-competition testing should adopt and enforce strict sanctions against athletes who fail to timely provide current, accurate and complete whereabouts information.

3. The IAAF should consider ensuring transparency in its own and its members' out-of-competition testing programs by acting as a clearing house to collect and publish statistics and data about those programs.

E. Reporting In Connection With The Olympic Games

1. The USOC should clarify its rules as to responsibility for adjudicating all doping control cases that arise after an athlete is nominated to a US Olympic team. In particular, the USOC should make clear that it is to be notified about doping cases that are pending or that arise after an athlete is nominated to the team, regardless of which organization administered the test.

F. Monitoring IOC-Accredited Laboratories

As discussed in the Report, the now-closed Indianapolis laboratory experienced an unusual level of technical errors and failed to timely report positive samples to the IAAF, as it was required to do under the Olympic Movement Anti-Doping Code. The Commission was advised that the IOC Medical Commission was not made aware of these errors until after the Sydney Games. In this regard, the Commission recommends as follows:

1. Organizations involved in doping control, such as USATF, that learn information about deficiencies in IOC-accredited laboratories, should report such information to the IOC.
2. The Commission also encourages WADA and the IOC to review its procedures for accreditation of laboratories and for determining and monitoring whether established protocols are adhered to by the laboratories.

G. Harmonization of USATF, USADA and IAAF Rules

The Commission encourages all organizations involved in international and national sport to work with WADA to harmonize doping controls to the fullest extent possible. In this regard:

1. The Commission encourages the IAAF Council to cooperate with and accommodate any effort by USATF and USADA to harmonize their domestic doping control procedures with those of the international community.
2. The IAAF Council should implement a formal mechanism whereby members may obtain clarification of and definitive rulings on the meaning of IAAF doping control Rules and Procedural Guidelines. When necessary, the Council should also make declaratory rulings of interpretation that are binding on all members, and should establish and use dispute resolution mechanisms, such as mediation, to resolve promptly disputes arising between members and the IAAF.
3. In particular, the IAAF Council should clarify and make explicit that Rule 61.1 requires the immediate reporting of positive “A” samples.
4. The IAAF should consider whether it can amend its Rule 21.3(ii) to reflect the reality that when the IAAF proceeds to arbitration in a doping case, it is proceeding against an athlete, and not the athlete’s national federation.
5. The Commission supports the recommendation before the IAAF Congress that the Court of Arbitration for Sport ("CAS") become the adjudication body for the IAAF.

* * * * *

The Commission hereby submits its findings and recommendations.

Respectfully submitted,

/s/
Prof. Richard McLaren, Chairman

/s/
Curtis H. Barnette, Secretary

/s/
David Howman

/s/
Colonel Micki King, Ret (USAF)

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